ENCYCLOPAEDIC DICTIONARY OF THE DHARMAŚĀSTRA



VOLUME

1

SWAMI PARMESHWARANAND

The Encyclopaedic dictionary of the Dharmasatras is a thematic collection and compilation of all important aspects of the *Dharmasastras* which play very important role in development of Indian religio-philosophical and legal tradition. If there is one mass of scriptures that has inspired and sustained the Hindus over the millennia, it is the *Dharmasatras* which has created, strengthened and preserved our great tradition of spirituality. This it has done, not only by a fearless spirit of inquiry to its logical conclusions, but also by intuitive mystical experiences beyond the ken of the intellect. No school of thought, no religious movement of the subsequent periods in Indian history has remained untouched by their influence if not pervaded by them.

Rs. 1800 (Set of 3 Volumes)

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Volume 1
(A-J)

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Sarup & Sons
New Delhi-110002

Published by

Sarup & Sons
4740/23, Ansari Road
Darya Ganj, New Delhi-110002
Ph.: 3281029, 3244664
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Encyclopaedic Dictionary of The Dharmaśāstra (3 vols.)

1st Edition 2003
ISBN 81-7625-365-0 (set)

Printed in India

Laser typesetting at Jain Computers and Printed at Roshan Offset Printers, Delhi.

Preface

The Enclyclopaedic Dictionary of *The Dharmasastras* is a compilation of comprehensive and informative source of informations about the 300 terms and terminology religious, social and political of Hindu codes of law and duty in three volumes. *Dharmasastra* (Treatises on law and duty) are the fundamental texts of the scriptural category of *smriti,* indeed for some (such as *Vijnaneshvara* and *Yajnavalkya-Smriti)* the only ones. The most prestigious and widely authoritative is that of the first man, Manu; but the genre is here represented by what is the next most prestigious, and perhaps more often actually followed authority, the *Yajnavalkya-Smriti* which covers rules about impurity, acceptable infringements of rules during times of emergency, and rules for forest ascetics *(vanaprastha)* (who still maintain sacrificial fires) and for renunciates who have internalised the fires *(yati* or *sannyasin).*

It seemed preferable to give large, unbroken, coherent units of text from the first and third sections of the less prestigious *Yajnavalkya-Smriti* than to attempt to anthologise the *Manusmriti,* the law book of Manu, in which the themes here represented are often more diffusely treated and scattered through the work.

I am thankful to all those scholars for their intellectual as well as moral support in compilation of this work.

A

'Acāryāh'

The word *ācārya* is derived by the *Āpastambadharmasūtra* (I.1.1.13 and 15) as *ācārya* is he from whom he (the pupil) gathers the (knowledge) of religious duties: he (as if) gives birth to him (the pupil) through (the transmission of) Vedic learning'. Gautama (*Dharmasūtra*, I.10-11) states. 'He is the *ācārya* who performs the *upanayana* of a pupil and teaches him the *Veda*', *Manu*, II.140, *Vasiṣṭha*, II.4 and III.21, define *ācārya* in similar terms. Therefore, the first meaning of the word *ācārya* is 'teacher of the *Veda*' (in the case of a pupil).

Another sense arose from this meaning of the word. The founder of a *śāstra* or any great teacher of *śāstra* is called *ācārya* by subsequent writers. For example, Patañjali when dealing with the two *vārtika 'bhave* and *proktādayaśca taddhitāh'* states that the *ācārya* (meaning Pāṇini) first composed the *sūtra—tatra bhavaḥ* (IV. 3.53) and then composed the *sūtra—tena proktam* (IV.3.101) and the *ācāryas* after first composing individual *sūtras* do not give them up. On the *vārtika—siddhe śabdārtha-sambandhe,* Patañjali speaks of the *vārtikakāra* as *ācārya*. There are numerous places in the *Mahābhāṣya* where the epithel *ācārya* is applied to Pāṇini or to the *Vārtikakāra* according to the exigencies of the discussion (e.g. vol. I, p. 481, vol. II, p. 163. II. 349, 359 for its application to the *Vārtikakāra).* Neither Pāṇini nor Kātyāyana is deemed by any one to be the teacher of Patañjali.

Śabara in his *bhāṣya* on Jaimini, III.4.13 states the view of the *ācārya* that "the base and the termination together convey the sense of the termination and further that the *ācāryas* lay down in such *sūtras* as *kartari śap* (Pāṇini, III.1.68) that the termination denotes the agent or the object." Here the word *ācārya* is applied to Patañjali and the same word (in the plural) is applied to Pāṇini. In the same context a little later on Panini is styled *sūtrakāra* and Patañjali simply *ācārya.*

Some passages from very ancient works where the word *ācāryāḥ* occurs may now be profitably set out. The *Aitareya Āranynka* (III.2.6) states that the *ācāryas* held that 'these

Smhitās should not be imparted to one who is not a pupil, nor to one who does not stay (with the teacher) for a year, nor to one who may not or will not himself be an expounder.' Here by the word *ācāryāḥ* Sāyana does not understand the direct teacher of him, whoever he may be, that had the revelation of the *Araṇyaka*, but 'great men who are endowed with the qualities of an *ācāryā*. Similar rules about imparting some esoteric lore occur elsewhere also (without *ācāryāḥ* being added).

In the *Nirukta* there is a discussion about Vaiśvānara 'Then who is Vaiśvānara? The *ācāryas* say that he is the (fire) in the intermediate regions, since (the Vedic sage) praises him on account of his action of sending down rain. The ancient *Yājñikas* hold that Vaisvānara is the Sun and Sākapūni holds that he is this (terrestial) fire only'. Yāska does not state his own view, but as Sākapūni opinion is placed last he most probably approved of that view. It is well-known that Yaska names numerous predecessors and also quotes the views of several schools of Vedic exegesis such as the *Nairuktas, Naidānas, Vaiyākaraṇas, Aitihāsikas*. It is very natural to hold that Yāska refers to his predecessors on the subject by the word *ācāryāḥ*. The two commentators Durga and Mahesvara support this view.

The *Hārita Dharmasūtra* as quoted by Apararka (p. 221) states "a man should therefore be pure and should take a proper (requisite) and limited quantity of food. The *ācāryas* say 'purity of mind results when there is purity in the food taken'." The words quoted as voicing the view of the *ācāryas* are found in the *Chāndogya Upaniṣad*, VII.26.2. Therefore, it follows that Harita is quoting the view of the inspired teachers of the *Upaniṣads* and it is impossible to hold that he is stating the view of his own teacher only.

In the discussion about *āśramas* the *Gautama Dharmasūtra* (III.36) states 'But the *ācāryas* prescribe one *āśrama* only, because the order of householders is explicitly enjoined (in the *Vedas).'* Haradatta explains the word *ācāryāḥ* as 'all teachers'. Maskarin also holds that the word *ācāryāḥ* means 'Some teachers'. The same *sūtra* occurs in the *Baudhāyana Dharmasūtra* (II.6,29). If by *ācāryāḥ* the writer's own teacher is meant, then we shall have to suppose that the teachers of both Gautama and Baudhayana held the view mentioned or that both had the same teacher. It is possible that Baudhayana borrows Gautama's words, Even in that case it is not probable that Baudhayana would have borrowed that *sūtra* if in his opinion it embodied merely the view of one single and so far obscure teacher of Gautama. But if in Baudhayana's opinion *ācāryāḥ* meant 'some or many predecessors' he may naturally quote the very words :' of Gautama. In another place Gautama (IV.18) states the view of *ācāryas* that the descendants of *anuloma* marriages 'reach another *varṇa* owing to the superiority or inferiority (of the male or female in each generation) in the seventh or fifth generation'. Here also Maskarin understands that it is the view of some *ācāryas* (and not of the teacher of Gautama) that is referred to.

It is well-known that Pāṇini mentions by name at least ten predecessors, viz. Apiśali, Kāśyapa, Gārgya, Gālava, Cākravarmaṇa, Bhāradvāja, Sākaṭāyana, Sākalya, Senaka, Sphoṭāyana. He also refers to eastern and northern grammarians and in two places to *ācāryas* (VII.3.49, VIII.4.52). It is often said by the commentators of Pāṇini that the individual authors are named only to show respect *(pūjārtham)* and not for the purpose

of showing dissent from their views. No commentator says that by *ācāryāṇām*. Pāṇini refers to his own teacher. The *sūtra* —*dirghādācāryāṇām* (VIII.4.52) comes after two *sūtras* expressly mentioning Sākaṭāyana and Sākalya. Therefore, it is reasonable to suppose that by the word *acāryāṇām* Pāṇini refers to some teachers other than the two expressly named. The Kāsikā comments *dirghād-uttarasya ācāryāṇām matena na dvitvam bhavati*. It does not say that the word is employed in the plural to show respect and its way of commenting shows that the *sūtra* refers to the view of some *ācāryas*. On *dīrghādācāryāṇām*, the *Nyāsa* states that the word *ācāryāṇām* is mentioned *pūjārtham*. Granting that it is so, it does not follow that it is the teacher of Pāṇini that is referred to.

The *Kāmasūtra* of Vātsyāyana is a work that, though some centuries later than the Kauṭilya. is quite similar in style. method and outlook to the Kauṭilya. Vatsyayana informs us that several *ācāryas* like Cārāyaṇa. Suvarṇanābha, Gonardiya wrote on individual topics of the *Kāmasūtra*, that the latter as a complete *śāstra* had become well-nigh lost, that he put into a small compass all the topics dealt with in works on distinct topics like those of Dattaka and in the comprehensive work of Bābhravya and composed the *Kāmasūtra*,. It is important to note that he refers to eight predecessors (mentioned in 1.1.10-17) as *ācāryas* (1,1.18) and names no teacher from whom he learnt the *Kāmasūtra*. The *Kāmasūtra* several times states the views of *ācāryas* and dissents from them. For example, the view of *ācāryas* was that as sexual desire was observed even in lower animals and as it is a constant tendency, no useful purpose is served by propounding a *śāstra* dealing with sexual desire, Vātsyāyana dissents from this view.

A *few* striking passages where the views of *ācāryas* are combated by Kauṭilya may now be examined. Kauṭilya remarks (1.4). "The *ācāryas* say 'The king desirous of maintaining the orderly government of the world should always have the rod of punishment ready: there is no such means of bringing beings under control as *daṇḍa*.' Kauṭilya's view is that this is not so. Since one whose rod of punishment is severe causes beings to turn away from him etc. The words of Manu. VII.102 (first *pāda*) are the same as the first part of the passage quoting the views of the *ācāryas*. Therefore, here Kauṭilya is animadverting against , the views now represented by Manu., and not merely the views of his own teacher.

In another place Kauṭilya (III.7) starts a very important topic. "The *ācāryas* hold that (the child of) seed sown in the wife of another belongs to the owner of the field. Others say 'the mother is like bellows; the child belongs to him from whose seed the child is born; Kauṭilya holds that it belongs to both." This subject exercised the minds of writers centuries before Kautilya. Gautama (18.9-13) mentions all the three views. *ApDhS*. II.6.13.6 expressly says that according to a *Brāhmana* text the son longs to him from whose seed he is born. The same three views are found in Manu. IX.50-53 and Vasiṣṭha. XVII.6-8, while Yājñavalkya. II,127 holds the same view as Kauṭilya does. The *Adiparvan* 104 (6) states that one view was that the child of *niyoga* belonged to the husband. Vide *History of Dharmaśāstra*. Vol. II. part I, p. 605. Sankha-Likhita state that according to the Vedic view the child belongs to him who is the owner of the wife, that according to Angirasa the

child belongs to him who had married the woman with Vedic *mantras* and that according to Usanas it belongs to both if it is produced on the wife of another with the mutual agreement of the husband and the person appointed. We know from the Kautilya that among the schools on Politics there were two, viz, the Bārhaspatya and the Ausanasa. Śaṅkha-Likhita probably refer to the works of Bṛhaspati and Uśanas in the above passage.

The very fact that Kauṭilya employs the word *apare* with regard to the second view leads irresistibly to the conclusion that in *ācaytāḥ* he refers to the view of *eke* and not to that of his teacher. If it is once accepted that in the above two passages *ācāryāḥ* does not refer to the teacher of Kauṭilya, then it will have to be presumed until the contrary is proved, that Kauṭilya must have followed a uniform practice and in all other p1aces he employs the word in the sense of 'some teachers', The other numerous places where the views of *ācāryas* are cited and controverted cannot be discussed here for limitations of space. There is a further argument. It is somewhat difficult to understand why, if Kauṭilya employs the plural *āctāyāḥ* to show veneration for his teaher, he should have so many times. so vehemently and emphatically dissented from that honoured teacher, while he expresses dissent from seven predecessors only once and from others, only a few times. Later writers whenever they have to differ from the views of their, father or teacher, use very mild and halting expressions e.g. *vide* Nilakaṇṭha in his *Srāddha-mayūkha.*

Adhikar (Right)

The word *adhikāra* means "right", and it is significant that it applies equally to a right to do something, such as to perform worship, offer sacrifice, and the like, and to a right to receive something, to manipulate something, or to supervise something). The word for "title" (as in English law) is *āgama,* though in fact *āgama,* though in fact *āgama* suggests rather acquisition of title than title itself, for which it is commonly used. We have *dravyāgama,* "title to a thing", *dhanāgama,* "title in an asset", and we have *dhanādhikāra,* "right over an asset, proprietary right", the difference being that *adhikāra* is a neutral word with no association with the source of the right, or its character.

Could other than human beings have *adhikāra?* Land, slaves, moveables "belonged" to dieties, especially in the conspicuous cases of temple-deities. In *śrāddhas* "offerings" were (and still are) made to deceased ancestors and to gods, as well as to human guests. Sacrifices, daily and special, saw dedications to gods, often by groups. Animals might be the object of dedications; bulls, horses, elephants had villages assigned to their herds or stables for their maintenance. Phrases such as "god's village", "elephants' village" were current). Birds had, and still have, property dedicated for their support). Do the properties "belong" to the entities to which they are dedicated, and if so are the entities capable of *adhikāra?* If they are not then they are not capable of *svatva,* for *sva,* it seems, must imply some *adhikāra,* however infinitesimal.

It is established in the Mīmāṃsā-sūtra of Jaimini that the *adhikāra* to perfom a

sacrificial act is not possessed by animals, gods, etc.). *Adhikāra* is closely bound up with ownership of *sva*, for without *sva* you cannot make an offering or dedication. The twin conclusions, that animals and gods cannot own, and that they have no *adhikāra* over property whether to benefit or to give, are not controverted in our literature). The god's *adhikāra* in respect of the offering to him is of a special character, dependent upon the relationship set up by the proper dedication or offering, and circumscribed entirely by special texts from the Veda having an "unseen" force). The gods and animals do not *accept* what is dedicated to or for them, nor have they knowledge (in a strict sense) that a dedication, etc., has been made). The expression *deva-grāma*, "god's village", and the like, do not mean that a village is the determinor of Property described by a *deva*, (to use the *nyāya* terminology), but "a village dedicated to a *deva*, managed for the purposes of worship of the *deva* by managers" (below IV C [a); VII iv).

There is no proposition that minors and lunatics lack *adhikāra*. They lack *vyavahāra-yogyatva*, or *vyavahārāhatva*, "fitness for legal transactions", their transactions, if made, may be *asiddha*, "infirm, voidable"); but their enjoyment of their *adhikāra* proceeds through the instrumentality of others.

For centuries it was seriously open to question whether females could be *adhikāris*, possessors of *adhikāra*. Their unfitness for some sacrifices was certain, but in general it was, and is, admitted that they are entitled to be managers of worship of a deity, and to share in the profits, if any, of such worship. In practice females actually worship only household deities and deities of certain special cults; otherwise the actual offering is made on their behalf by a male (usually a Brahman). That females could not be *adhikāris* was not precisely the same as contending that they had no *sva*, Because of their lack of fitness to partake in sacrificial ritual upon an equal basis with men, because they lacked the *indriya* or vital potency which was thought to be necessary for dealings with Indra and other *devas*, it was asserted in a late Vedic text that they were *adāyādas*, i. e. non-sharers. This was interpreted to mean that they could neither inherit nor take property at a partition of the family's wealth. Later commentators reasonably point out that they lack potency and therefore lack a share in *Soma*-juice, not property in general.

To this the orthodox replied that women were themselves the objects of Property, for their husbands owned them: whence could they be owners themselves? The obvious parallel of slaves was not cited in reply. Instead it was pointed out that although the special relation between husband and wife (ibid.) was one involving *svatva*, for the wife, *patnī*, is *sva-patnī* of her husband, the *svatva* was not comparable with that present when a cow was the *sva* of her Owner. To this apparently obvious remark the incontrovertible reply appeared, namely that wives were in fact bought, received in gift, sold, transferred like land, and even lent on hire. Nevertheless the very old expression *strī-dhana*, "female's asset", proved that women could have *adhikāra*, even if they might not be *svatantra*, "independent", in exercising it (on which see further, V ii).

Adoption in Aliyasanthana Law

The interest of the recent decision of Krishnaswami Nayudu, J, in *Gopi Nath Shetty v. Santhana,* passes far beyond the borders of the situation which was there specially considered. It is true that persons subject to Aliyasthana law, which was in issue, are by no means inconsiderable in number, and that the extremely important decision in this ease will affect the lives and happiness of many people. But the chief value of the case lies in its exemplifying the manner in which a Hindu Judge deals with an open question of custom; and since custom will continue to have a great practical importance even now, after the passing of the Hindu Succession Act (not to speak of the special problem raised under similar heads in the Hindu Marriage Act, 1955), we are grateful for any light on the fundamental question, how is customary law to be ascertained when it is to be applied as part of the substantive law of the land—a question which contains within itself the essential problem of where the burden of proof is to lie—and it is in this connexion that *Gopinath Shetty's case* can be service to us.

It will be recollected that the Hindu Succession Act, 1956, makes no mention of adopted children, except in the context. In section 3 (1) "agnates" and "cognates" are defined as related "by blood or adoption" in particular manner respectively. But the Act gives the estate of a deceased person subject to it to relations specifically named as such, and adopted *children* do not appear within the permitted definitions. An adopted son, therefore, whose father, grandfather, great-grandfather, mother, mother's father and so on dies after the 17th June, 1956, and who would have been entitled to a benefit on intestacy under the Act if he had been a legitimate son, would be well advised to postone his suit (if required) until after Parliament has remedied this lacuna or anomaly by one of the two methods open to it. It may amend the Succession Act suitably, and with retrospective effect, or it may make a suitable provision in the Hindu Adoptions and Maintenance Act, which is now pending in the form of a Bill in the Rajya Sabha.

That Bill, by section 10 (iii) and (ie) provide that a married person shall not be adopted, and that a person above the age of 15 years shall not be adopted "unless there is a custom or usage applieable to the parties which permists" a contrary adoption. It follows therefore that if these clauses pass into law, which we have every reason to expect, since they conform in principle to a precedent established in the Hindu Marriage Act, adopted children will be entitled to succeed as if they were legitimate children (under Section 12 of the Bill), although their claim to be adoptive children rests upon a custom or wage permitting such persons to be adopted notwithstanding the general peovisions of the adoption statute itself. And the Court will often be called upon to investigate the question whether a custom or usage exists permitting the parties in participate in an adoption where the adoptee is over 15 or married. This will be a fascinating problem, since, although in some castes such customs will perhaps be fairly easy to prove, in the majority of cases there is at present no customary law in existence on the point, for the matter has been dealt with as a pure question of Hindu law; and at that law certain castes in certain parts of India have been permitted to adopt boys over 15 and married boys, and

in very restricted areas adoptions of girls have been permitted, whether married or unmarried, under the peculiar, partly enstomary and partly legal, system which we are directly concerned with in this paper. I ignore for the present the difficult question whether adoptions by *devadasis* could be brought within the meaning of the adoption satute and so within the meaning (eventually) of the succession statute. To resume: since the topic has been transferred from the realm of Hindu law proper to the realm of customary law in derogation from, but supplementary to the general statute law applicable to all Hindus, the court will be asked to determine whether, for example, a Sudra male can in Madras adopt a Sudra boy over 15 by virtue of a custom or usage. The Courts for more than a century have accepted that as long as he is unmarried he may be adopted. But now proof of custom or usage must be adduced, and repeatedly addueed before the Court can take judicial notice of it. It by no means follows that because the law of the Sanskrit texts has always been held to authorise such adoptions, a custom or usage of such adoptions will be successfully made out in respect of every community among the Sudras. The matter may well turn upon the question, upon which party shall the burden of proof lie. It would seem, *prima facie*, that the plainiff is obliged to show that the adoption upon which he relies was permitted by a custom or usage applicable to the parties to the adoption in question. But the Court may well take the view that, if the parties were all Sudras, the law before (?) 1956 permitted such adoptions, and that the burden shifts to the defendants to show that in that particular community such custom or usage did not exist at the relevant time. Of course, if the adoption was of Sudra boy by a Brahmin the situation seems past avail: and for some years the old distinctions between castes may persist notwithstanding the evident intention of the Legislature to abolish all such distinctions. In our general problem, however, *Gopinath Shetty's case* may well be of some assistance, if only to clarify our ideas.

The facts were simple. Gopinath was the daughter's son of one K, who was adopted by a certain Peruvaje B. Banta, who had no issue, and whose line was in danger of extinction, together with a possible lapse of the religious duties and privileges which had been carried out and enjoyed by the said adpotive father. *K.* herself, at the time of her adoption, was a member of a family known as the *Yemmoor Katta*. She persisted in the view that although she had been adopted she did not lose her membership of her own family, and in these proceedings her grandson in the female line, who would undoubtedly have been a member of the Katta family had *K* herself been such a member, sued members of that family for maintenance. At first sight it would seem that any adoption would transfer the adopted from one family to another, so that the adoptee himself and his desendants would be cut off for ever from the natural family, and neither would therafter have any claim for maintenance against the natural family. This impression we gain from our general acquaintancy with adoption as known in the ancient Roman law, the the modern English law, and the Hindu law of the *dharmasastra* as administered by the Indian High Courts in this context, and we find our notion confirmed in the terms of the Hindu Adoptions and Maintenance Bill which to Section 12 seeks to provide that:

"An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purpose with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those ereated by the adoption in the adoptive family....."

There follow *pravisos* which do not concern us here.

But this general impression is soon shown to be unreliable, when we reflect that the adoption laws of civilized countries do not invariably cut the adopted child off from the natural family. In most cases the adoptee can claim maintanance in the first place exclusively from his adoptive parent, though he can sometimes in necessity fall back upon his natural family; but in a great many cases the right of inheritance from the natural family is expressly retained. And although the question of a right to maintenance is undoubtedly distinct from that of a right to suceession on intestacy, the general concept underlying both seems one and the same. If one is really cut off from one's natural family one can neither inherit from it not be maintained by it. Now the *dharmasastra* as administered to-day is a most unsafe guide in this connexion. To this we shall return presently. And our evidence of the customs of pre-aryan peoples in Indian points to no such simple and straightforward solution as that envisaged above. All sorts of adoptions used to prevail and the 'complete transfer' type of adoptions seems to have been rather the exception than the rule.

To return to Gopinath Shetty. Our authorities on the law applicable to the case are the treatises on Aliyasautana law. This law is itself the ereature of custom the greater part of which by reason of long administration under the eye of the High Court at Madras has come to the stage of being judicially known and is to be found in the text-books of Mayne and Sundara Ayyar, both being very antiquated. The work ascribed to Bhutalapandya is now under a cloud and can only be consulted as a curiosity. Mr. Raghavachariar in his work in Hindu law does not give a large independent attention to Aloiyasantana law, and the other writers for the most part ignore the system. Mr. V. N. Subramania Iyer in his work on Hindu law gives details of the modern *Marumakkattayam system*, but, like Mr. Raghavachariar, neglects Aliyasantana. This is, unfortunate, since Aliyasantana law was to a large extent refashioned on the Madras Aliyasantana Act (Act IX of 1949). The act, however does not disturb the pre-existing law of adoption, and throws no light on our problem. Mayne says:

"The law applicable being essentially customary, the question whether the adopted person loses his rights of inheritance in the natural family can be decided only by having recourse to evidence as the custom in the absence of texts or express judicial decisions."

Sundara Ayyar says:

"As to whether as a rule the persons adopted lose their rights in their natural family or only gain rightes in the family into which they are adoped withour losing any of those rights has not yet been finally decided."

In Second Appeal No. 1585 of 1894, Best and Subramania Ayyar, JJ., held that on the facts of that case rights in the natural family were retained. They referred to the *kritrima* form of adoption in the current *sastric* law as administered by the Northern India High Courts, remarking that the situations were comparable. In *Seetha Neithyar v. Kelu Menon*, a case concerning Malabar Nairs, Madhavan Nair, J., (as he then was) expressed the view that the adoptee their lost his rights of inheritance in the natural family; and he remarked that the resemblance to the classical *kritrima form* related only to the general secularity of that type of adoption. Neither of these cases formed precedents for Gopinath Shetty, since the plaintiff belonged to the Nadavar community, in respect of which no decision had ever been arrived at in the High Court.

It was argued (evidently very ably) on behalf of the plaintiff that in Aliyasantana law adoption is a purely secular matter, amounting in fact to a nomination of an heir. The *sastric* form known as *kritrima* was of the same sort in that no religions object is normally served (this is not quite true) thereby, and we can argue from the similarity that adoptions in Aliyasantana law do not deprive the adoptee of his rights in his natural family, any more than the *krita-putra* of Mithila is deprived of similar rights. Krishnaswami Nayudu, J., however, approached the problem in the following manner: The claim that Aliyasantana adoptions are purely secular is not true, since in this case as well as in other cases religious objects are served as well as the secular object of the continuation of the line. The notion of adoption in India is a purely Hindu, one and has a religious background. On that account we must go to the *dharmasastra* notion of adoption for our general guidance in such a context as this. The *dharmasastra* itself does not contemplate and adoption other than a 'complete transfer' type of adoption. Hence, since the plaintiff has not adduced adequate evidence of a custom in his community that adoptees shall continue to enjoy maintenance in their natural families, the general presumption will apply, and maintenance cannot be claimed.

It is submitted that the actual decision arrived at in this manner, was probably correct. With respect, since adoption at Aliyasantana law provides for the maintenance of the adoptee there can exist little basis for a concurrent maintenance claim against the natural *kutumba*. And thus a very strong case would have had to be made out for Gopinath Shetty being entitled to be maintained by the Katta family. This is not to say that in the event of the property of the Peruvaje family proving to be insufficient for his maintenance a custom might not have been successfully made out permitting hime to resort to his original blood-family. But that is another question, and is purely hypothetical. But it remains to point out that this case is no authority for the proposition that Gopinath could not have succeeded on intestacy to members of the Katta family, for the *ratio* of the judgement in this case cannot stand up to examination in that context. Let us first view it in the learned judge's own words: "It cannot be denied that the religious efficacy of sonship is the fundamantal background for an adoption and, in the case of Marumakkattayam and Aliyasantana systems, where the efficacy of sonship as in those adopting 15 the Mitakshara system is not material or relevant, the continuation of the

family is the guiding factor for resorting to an adiption. The extinction of the family and the consequent failure of any members therof not only to enjoy the properties belonging to the family but also to continue to perform the religious and devotional duties enjoined upon the members of the family which they had been traditionally performing furnish the reason for adoption in an Aliyasantana or Marumakkattayam family."

And again: "The concept of adoption is not derived under Hindu Law and the effect of adoption is that the adopted son occupies the same position and is entitled to the same rights and privileges as the son born in the family to which he is adopted, the principle of engrafting into the family of adoption depending upon a total severance of the adoptee from the family of his birth. If that notwithstanding it is based on the customary law. It is reasonable to hold therefore that the rule in every case of adoption whether the adoption is the theory of adoption, in the case of those who have recourse to adoption for continuing the family, not under any system of law but by custom as in the case under consideration *prima facie* it must be held that the severance from the family of birth would also apply to such an adoption is sanctioned by law or by custom and usage—is that it effects a severance from the family of birth, the adoptee becoming entitled to all the rights of the family to which she is adopted. If there is any custom contrary to the rule, then it is for those who rely on the custom to establish it. In the present case, the plaintiff has not proved the existence of such a custom."

It is clear therefore that the learned Judge, acting upon a presumption for which there was no authority binding upon him, either by precedent or by statute, placed the burden of proof upon the plaintiff to show that there was a custom of retention of rights, instead of the reverse, which it is submitted he ought to have done (and should certainly do were the question one of sucession *ab intestato*), namely, placing the burden of proof upon the defentant to show that adoption deprived the adoptee of rights in the natural family. The burden plainly and logically falls upon the defendant; the absence of a law depriving a person of vested rights upon that person's acquiring new and distinct rights, suggesting very forcibly that proof of a custom or usage of deprivation is required before the Court will refuse to grant an otherwise subsisting remedy.

Indeed the learned Judge's *ratio* is, with respect, unsound. It by no means follows that adoption automatically involves a complete transfer. Mahamahopadhyaya Dr. P. V. Kane has long protested against this mistake in interpreting the *dharmasastra* itself. The medieval *sastris* by no means believed that the *dattaka* himself was totally and irrevocably cut off from his natural family. He might be obliged to give a pinda, to suffer pollution on the death of and might in certain circumstances claim the estate of, a relative in the natural family. If this was true of the *suddha dattaka*, how much more true was it of *dattakas* such as the *duyamushyayana*! The latter is perfectly well known to retain all his rights in the natural family. The *kritrima* son is by no means the best example for our purpose. If we examine the various subsidiary sons catalogued by Manu and others we find that the *only* one who is specifically debarred from taking his natural father's property is the *dattaka*, and the mention of the dattaka in this way clearly shows that the other secondary

sons were *not* cut off for the purposes of inheritance from their natural families.

Moreover we are all clear that adoptions in Malabar are not *dattaka* adoptions at all. They are based on ancient pre-aryan customs, of which various traces survive all over India and in Ceylon. Nearest of all, the various Marumakkattayam adoptions deprive the adoptee of only some rights in the natural family, and that only in certain circumstances, and in many cases with the specific retention of the right to succeed to a collateral of the natural parent on failure of nearer heirs. The various Malabar Statutes make no difference in this situation. If we pass to the other side of the Peninsula we come to the *illatom* form of adoption, in which all the adoptee's rights of inheritance in his natural family are retained. Admittedly it is a specialised type of adoption, but its similarities with the Aliyasanana adoption are not insignificant. In Punjab customary law adoption does not invariably cut off the adoptee's rights of succession in his natural family and instances of customs to the same effect are found outside the Punjab. Excellent evidence on this subject is forthcoming from the *Tosaralamai*, the code of Hindu customary law compiled by the Dutch in Jaffna in the first years of the 18th century. The adoptee loses rights of sucession corresponding to the rights of succession which he or she gains by adoption: *e.g.*, if a male adopts, the adoptee will continue to suceed to his natural mother and her kindred, but if he is adopted by a married couple he loses all rights in the natural family on both sides. The Kandan Sinhalese are subject to the Kandyan Law, which is derived from customary laws broadly similar to many still or recently in vigour in South India. That system permits adoptions, and the adoptee by no means necessarily loses all right of succession in his natural family. In the first place he may succeed to so much as will make up his share to what he would have received had he remained unadopted; then he has a right of succession equally with sons who have married out of the family: finally his children can, by maintaining their relationship with their natural grandfather, continue to expect a share in the latter's estate.

These instances together with evidence which could be collected from outside India lead to the inevitable conclusion that there was no basis for the learned Judge's presumption that all unddcumented adoptions must *prima facie* be of the complete transfer type. On the contary, there was a basis for the view that the Aliyasantana adoption in question in *Gopinath Shetty's case* did not totally sever K from her *kutumba* and that if she kept up her relationship with her natural family (as she formerly had attempted to prove) the burden of proof lay upon the defendants to show that the right of succession and maintenance which normally belonged to descendants of their common ancestress in the female line had been cut off by the adoption (possibly joined with *K's* conduct subsequently to it). And if the defedants had been unable to adduce such proof, the suit might have then been deereed in the plaintiff's favour. It is submitted that in a succession dispute the approach indicated would be the correct one in any case.

In conclusion we may note that the succession-rights of all adopted children under the Aliyasantana law have been radically modified by sections 7(2) and 17 of the Hindu Succession Act, 1956. As in the general law referred to above, the Legislature have failed

to make provision for adopted children, and until the Act is amended in on or other of the ways suggested above no adoptee can inherit in such capacity from his adoptive family except in the remote classes of "agnates" and "cognates." And since there is no statutory provision which *takes away* the rights of succession of issue *who have been given in adoption*, it is submitted that justice. Equity and Good Conscience require that the persons who have been adopted according to the customary law of Malabar should continue to succeed to their natural relations as if they had not been adopted at all. Otherwise their perfectly legal adoptions will be found to have totally deprived them of all intestate provision. The situation which will arise when the Hindu Adoption and Maintenance Bill becomes law deserves separate consideration, which can safely be postponed until that time comes.

Asahāya the Commentator of the Gautama-Dharmasūtra and the Nāradasmṛti

Asahāya is one of those eminent and ancient commentators of the *Dharmaśāstra* whose works once famous are now not available. Dr. Jolly in his edition of *Nāradasmṛti* (Bibliotheca Indica Series) has incorporated a portion of the *Bhāsya* of Asahāya as revised by Kalyāṇabhatta. Even this revised version extends only up to the middle of the fifth *adhyāya* of the *Nāradasmṛti*. The exact relation of Kalyāṇabhatta's labours to the original *bhāṣya* cannot be ascertained with precision from the words: *dṛṣtvāsahāyaracitam nāradabhāṣyam kulekhakairbhrastam kalyāṇena kriyate prāktanametadviśodhya punaḥ* (first verse) and *iti asahāyanāradabhāṣye keśavabhaṭṭaprotsāhitakalyāṇabhaṭṭapariśodhita-vyavadāramātṛkāyām prathamodhyāyaḥ* । (at the end of the first chapter of the Introduction). It is probable that Kalyāṇabhatta took very great liberties with the text of the *Bhāṣya* of Asahāya. On page 9, verse 15 *rājā satpurusah sabhyah śāstram ganakalekhakau* the comment is *śāstraraṁmanunāradnviśvarūpātmakam*. If this Viśvarūpa be the same as the commentator of the *Yājña-valkayasmṛti* (as is most likely), it is difficult to see how Asahāya could regard him as of almost equal authority with Manu and Nārada. Asahāya flourished earlier than Medhatithi, i.e.. before AD 900 and was therefore either a contemporary of Viśvarūpa or even earlier than the latter. Viśvarūpa is another name of Sureśvarācārya, the famous pupil of the great Sankarācārya. In the *Parāsara-Mādhava* (Vol. I, part I, page 57, Bombay Sanskrit Series) we read "*idam ca vākyam* (viz. *āmre phalārthe nimitta* — *ApDhS*, 1.7.20.3) *nityakarmaviṣyatvena vārtike viśvarūpācārya udājahāra āmre phalārthe ityādi hyāpastambasmrtervacah* । *phalavattvam samācaṣṭe nityānāmapi karmaṇām* ॥"

The verse quoted occurs in the *Brhadāraṇayakopanisad-bhāṣya-vārtika* (I.I.97) of Sūeśvara. Therefore the *Parāśara-Mādhava* looked upon Viśvarāpa and Sūreśvara as indentical. In the *Purusārthaprabodha* of Brahmānanda-bhārati composed in 1476 (probably of the Saka era, MS. in the Bharu Daji collection in Bombay Royal Asiatic Society) we have the famous work ! *Niaskarmyasiddhi* ascribed to Visvarūpa *ityevarm naiṣkarmyasiddhau brahmāṁśairbrahmavittamaiḥ* । *śrimadbhirviśvarūpākhyairācāryaiḥ karunārnavaih* (folio 6). Therefore, the reference to Viśvarūpa in the comment on the *Nāradasmṛti* is probably from the pen of Kalyānabhatta. The name of Kalyānabhaṭṭa is frequently quoted in the

commentary itself (e.g., page 81 *tathā coktameva sāmānya-grāha-patra-laksanavicāraprakarane kalyānabhattena;* page 86, *yathoktarm trisastilekhya-prakaraṇa-kārakalyāna-bhaṭṭena;* page 89, *kalyāṇavaktam ślokatrayamasti),* altogether it is difficult to separate Kalyanabhaṭṭa's handiwork from the original text of the *Bhāsya* of Asahāya.

The *Hāralatā* (B.I. edn.) of Aniruddha gives us the interesting information "that Asahaya wrote a *bhāṣya* on the *Gautama-Dharmasūtra. gautamaḥ bāladeśāntaritapravrajitānām sapindānāmsadayaḥ śaucam (GDhS.* 14.44) *yatra mrto'śaucābhyantare na śrūyate taddeśāntaram tatra mṛto deśantarita iti gautamabhāṣya- kṛtā sahāyena vyākhyātam (Hāralatā,* p. 35). In another place the *Hāralatā* quotes the *Gautama-Dharmasūtra* and the comment of Asahāya thereon, but expresses its disapproval of the views of Asahāya *gautamaḥ — pindanivṛttiḥ saptame pañcame vā (GDhS,* 14.12) *atrāsahāyavyākhyā-yadā pitrpitāmahaprapitāmahāstrayo jivanti tadā prapitāmahadūrdhvam tribhyaḥ pindadānam* I .. *idam tu vyākhyānam na śobhanam pratibhāti (Hāralata,* page 97)," These quotations make it clear that the author of the *Hāralatā* had the *bhāṣya* of Asahaya on the *Gautama-Dharmasūtra* before him. Aniruddha, the author of the *Haralatti,* was the *guru* of Ballala Sena of Bengal who commenced his work called *Adbhutasāgara* in Śaka 1090, i.e.. AD 1168.

It appears that Asahāya wrote a commentary also on the *Manusmṛti.* In the *Sarasvatīvilāsa* (Foulke's edition) we read: *dharmavibhāgo manu-yājñavalkyādi-smṛtikārānām tatsmṛti-vyākhyātrnāmasahāya-medhātithi-vijñāneśvaraparārkāṇām nibandhṛṇām candrikākārānām ca sammata eva* (sec. 33). Here it will be noted that the order in which the four commentators are named requires that Asahāya was cited as a commentator of Manu. This conclusion is further corroborated by the fact that the *Viviidaratniikara* quotes with reference to the verse of Manu (9. 182. *bhrātrnāmekajātānāmekaścetputravānbhavet*) the words of Asahāya *atra asahāyenoktam pumsām sati brātrje strinām sapatniputre ksetrajādayaḥ pratinidhayo na kartavyā iti* (page 583).

The foregoing discussion establishes that Asahāya composed *bhāsyas* on three of the most prominent works on *Dharmaśāstra,* viz the *Gautama-Dharmasūtra,* the *Manusmṛti* and the *Nāradasmrti.* It is a matter of profound regret that the commentaries of such an ancient writer upon these works that are of paramount authority in matters of law and usage should be lost to us. Great efforts must be made by those engaged in the search for Mss. to find out the lost works of Asahāya.

A few words may be said about the date of Asahāya. The Mitākṣarā while commenting upon Yājñavalkya (II.124 *bhaginyaśca nijādamśāddatvāmśam tu tutriyakam)* quotes the views of Asahaya and Medhātithi and opposes them to those of Bhāruci and approves the views of Asahaya. *ato 'sahāya- medhātithi-prabhṛtinām vyākhyānameva caturasram na bhāruceḥ.* It is to be noted that some Mss. read *asmatsahāya.* This is due to the fact that the very name of Asahaya had been forgotten. It is curious that the Balalambhatti explains the word *asahāya* as an attribute of Medhatithi and takes it in the sense of 'peerless'. Of all works on *Vyavahāra,* the *Sarasvatīvilāsa* quotes Asahāya most frequently. This shows that in the fifteenth or sixteenth century his works had not been lost altogether. Dr. Jolly expressed it as I his opinion that Asahāya lived earlier than Medhātithi *(Tagore Law Lectures,* p. 5; *vide Sacred Books of the East,* Vol. 25, page VII ! also). His main reason was that both

Vijñāneśvara and the *Sarasvativilāsa* place him before Medhatithi whenever authorities on topics of *Vyavahāra* are enumerated. Dr. Jolly does not appear to have been aware that Medhatithi actually mentions Asahaya by name in his *bhāṣya* on Manu (VIII.155 *adarsayitva tatraiva* etc.'). Medhātithi flourished about AD 900, as he mentions Kumārila by name and appears to refer to the *bhāṣya* of ' Sankarācārya on *Chāndogya Upaniṣad*, 11.23.4 (on Manu 11.83) and I as he is regarded as an authority by the Mitāksarā (latter half of 11th century). Therefore, Asahāya must have flourished before AD 850. How much earlier Asahaya lived it is difficult to say.

Some of the doctrines associated with the name of Asahāya may be stated here. It has been already shown above that Vijñāneśvara followed the views of Asahāya on the question of the right of sisters when their brothers separated. The *Vivādaratnākara* (p. 578) quotes the Prakāśa as referring to the views of Asahāya on the verse of Manu (9.198) *striyāstu yadbhavedavittam pitrā dattam kathamcan* ı) that the special rule of succession laid down by Manu applies to all the *strīdhana* of a woman belonging to the kṣatriya or lower castes who has a co- wife of the brāhmaṇa caste, *pitrā dattamiti stridhanamatro- palaksanamiti asahaya-medhātithiriti* (? *thi iti*) *prakāśakāraḥ* । The *Sarasvativilāsa* notes that Asahāya defined *dāya* in the same way as Vijñāneśvara did later on *asahāyavijlianayogiprabhṛtīnām yatsvāmisambandhādeva nimittādanyasya svam bhavati tddāya- Sābdencyata* iti । *tanna sahante bhārucyaparārkaprabhrtayah* (sec. 19). Asahāya seems to have held that as regards the succession to the *sulka* of a woman even step-brothers should be given something, though the major portion would go to full brothers *ataśca kanyāsulkavisaye sodarāsodaravibhāge'sodarānāmapi kiñcid deyamiti asahāya-vyākhyānamasahāyam'* (sec. 314). On the words of Yājñavalkya *bhaginyaśca nijādamśāddatvāmsam tu turiyakam* the *Sarasvativilāsa* tells us that the views of Asahāya. Medhatithi and Vijñāneśvara coincide (sec. 131 *etañca sarvamasahāya-medhātithivijñānayogipradipikākāradinām mata eva).* According to Asahāya, the wealth of a childless brahmana went to the teacher even before a fellow-student. then to the teacher's son and so on *(Sarasvativilāsa* sec. 608 *asahāyādayastu yonisambandhān-antaram vidyāsambandhavasadacāryagāmi tvetadaghnam tadabhāve tatputragāmi tadabhāve tatpatnigāmi* etc.) It is worthy of note that in section 195 we have order *vijñāneśvarasahāya-medhatithinlimiyam vyakhyā* ।

AGNI-DIVYA (The Fire Ordeal)

Appeal to god for the settlement of difficulty is deeply ingrained in human nature, and, therefore, we find examples of trial by ordeal among all the tribes of the world. The primitive man, under such circumstances, has always resorted to the Nature-Divine for solving his problems. The fire and water which represent the objects of nature, were thus nearer to him as divine agents declaring justice. Fire and Water are thus the primitive ordeals. In every civilisation, they are the most ancient of all the ordeals.

In India too, these two happen to be the most ancient ordeals. Manu refers to their remote antiquity. In order to establish the truth, a person must be asked to carry fire or

plunge into water', he points out. He quotes the example of Vatsa— 'Fire did not burn even a thin hair of Vatsa when charged by his younger brother, he points out. The ordeal tried by Vatsa is described in the Tāṇḍya Brahmana. According to this description Vatsa *entered* into fire to prove his caste. Explaining the example of Vatsa given by Manu, Medhātithi points out that the fire did not burn Vatsa who *entered* into it.

The old examples of the Fire ordeal thus show that the person undergoing this trial used to *enter* into the fire. But soon, this form underwent a change. The next form in which the fire ordeal evolved itself was to carry red-hot iron in hands. In the Chāndogya Up. We find that a person accused of theft carries red-hot axe (Paraśu) in his hands. The example of Vatsa described in the Taṇḍya Brahmana reveals to us the older method of entering into fire which, in due course, is replaced by a milder form of carrying the red-hot axe described in the Chāndogya Up. The fire ordeal described by the Dh. writers is derived from this Paraśudivya of the Chāndogya Up. (Pit. names it as Parasu at the place, while VN identifies the Yāj. Phāla (which is the same as Agni) with the Paraśu (vide f.n. 493).

The example referred to by Manu points out the old method of entering into the fire, but the words in which he actually recommends the ordeal clearly show that according to him the fire ordeal consists of carrying the fire. Manu who must be regarded as the first Dh. writer to describe the fire ordeal has, thus, in a way, tried to explain the form of the ordeal accepted in the Dh. Śāstra. Explaining Manu, Medhātithi points out that the person should be asked to cross seven steps by carrying fire in hands covered by seven leaves of fig tree. Manu's ordeal should be, thus connected with ordeal described in the other smṛtis, because the fire ordeal is traditionally known in this form only.

Considered from the caste-point of view we find that. it is particularly recommended for Kṣatriyas. Viśvarūpa however records following options: (i) It is recommended to all except the Sūdras. (ii) It is particularly recommended for Kṣatriyas. (iii) The Kṣatriyas and others are given a choice to select any of the fire, water and poison (vide f.n. 123 above).

The Agni should be administered to a strong and stout person. It is prohibited to a person suffering from white leprosy, a weak person and a blacksmith. According to Nār, it is prohibited to a white leper (Śvitrin). a blind (Andha) and a leper. (Kunakha). Nār. has prohibited ordeals for the persons who have undertaken vows, the persons who are full of miseries, the ascetics and the women. Asahāya explains that it is the fire ordeal that is prohibited in these cases.

Considered from the season-point of view we find that (i) Viṣṇu prohibits the use of Agni in the Griṣma and the Śarad seasons. (ii) Nar. prohibits it only in the Griṣma, while he points out in general that the fire may not be used in hot seasons. (iii) Pit. restricts it only in Śarad and recommends Śiśira, Hemanta and Varṣā as the suitable seasons for it.

It is thus found that the use of the Fire ordeal was made open in all the seasons except

when it was very hot.

The Firc ordeal should be conducted in the former part of the day.

The Procedure

VṢṆU:— Seven circles, each of 16 Angulas, having the same distance between each of them, must be drawn. Seven leaves of fig tree should be put on both the hands streched by the person who is facing east. The leaves should be tied alongwith the hands by means of threads. A red-hot iron-ball of the weight of 50 Palas should then be placed on the hands. Holding the iron ball in hands, the person should walk, stepping in the circles, neither very fast nor very.slow. After crossing the seventh circle, he should throw the iron ball on the ground. The person whose hands are burnt should be known as guilty. but the person who is not burnt at all, is pure. If the person throws the ball out of fear or if his burns are not clearly visible, he should be asked to carry the iron-ball again, since the trial in that case has not found out the truth.

The person should first rub the grains of rice on his hands and if there are any signs on his hands, those should be marked. The iron-ball must be placed in both of his hands, after the Fire is (properly) addressed with the following mantras' Oh Agni! you remain as an inner witness in (the hearts of) all the beings, (and as such) Oh Agni! only you know the things that are not known to the human beings. This person who is accused in this dispute wants to get himself purified and it will be worthy of you if you protect him from doubt in accordance with Dharma.

ŚANHA AND LIKHITA

A person may go the distance of seven circles, by holding in hands a red-hot iron ball of the weight of 16 Palas, covered with seven leaves of fig tree.

YĀJÑAVALKYA

The hands of the person who has rubbed the grains of rice, must be marked, seven leaves of fig tree must be placed on them and tied with the same number of threads. The person should address the fire with the following mantras: "Oh Agni! the Purifier! you remain in all beings. Oh wise! having observed like a witness the merits and the demerits, tell the truth for me ".

A red-hot iron ball equal on all sides must be placed on both the hands of the person who has recited the above mantras. Holding the ball, he should go slowly through the circles, each of which should be of the size of 16 Angulas. If the person who has rubbed the grains of rice after throwing the ball is found unburnt, he is pure. If the ball falls down in-between, or if there are doubts (regarding the burns), he should carry the iron-ball again.

NĀRADA

There should be circles of 32 Aṅgulas' size one aftcr thc other. With eight such circles, the ground thus required will be of 256 Angulas. Seven leavcs of fig tree must be put on both the hands of the accused person and must be tied with seven threads. The person, blacksmith by caste, proficient in heating iron and having an experience of its kind, should heat the iron in the fire. A pious Brahmin should get the well-protected iron-ball of 50 Palas' weight heated again to make it blaze red-hot like fire. Supported by the truth, the Brahmin should address the iron ball when it is heated for the third time, with following mantras: " Listen the duties of men attended by the Lokapalas. Oh! Agni! you are the most pious mouth of all gods. Residing in the hearts of all the Beings, only you know their operations. The truth and the falsehood come from your tongue. This has been said by the Vedas and the other scriptures and you would not belie it. This has been said to this person now, and if he has spoken lie, I will make him hold fire for all his falsehood. Oh! Agni! you should be cool for the person who speaks the truth, but should burn the hands of the guilty rogue who speaks lie".

The contents of the address must be written on a paper as they are. Having read the same to the accused person, the paper must be tied on his forehead, and the iron-ball must be placed in his hands in due order. Having taken bath and standing in the circle, he, holding the fire, should walk straight through the other even circles. Unconfused, he should go slow without any hatred for the fire. He should not throw the ball before reaching the recommended distance. He who throws the ball out of troubles or does not show the signs of burn' clearly, should be asked to hold the fire again. There should be circles (i.e. sub-circles) according to the (size of the) foot of the person undergoing the trial. He should neither skip the circles at random nor should he set his foot at a less distance than the one in between the two immediate circles. The fire ordeal must always be tried in this very procedure, in the cool season and never in Grīṣma. Signs like the foot of a crow (Kākapada) must be marked on all the wounds of his hands, and all such marks must be re-examined after the trial. If the signs of burns are not clearly visible, the grains of rice must be rubbed pressingly, seven times, on his hands. Even after rubbing rice in this way, if the person is confirmed as not burnt, he should be freed by the members, with due felicitations, but if he is found burnt, then, he must be punished.

According NMS, (even) with eight circles, each of 32 Aṅgulas, the ground required (to be walked) would be of 224 Aṅgulas. The person should observe fast and be pure. Having dipped himself in the water with clothes on, he should come to the site, with wet hair only.

KĀTYĀYANA

If the person falls down or if the fire burns any of his other limbs, he is not considered as burnt. He should be allowed a retrial.

PITĀMAHA

There should be eight circles, and beyond them, there should be the ninth circle. The nine circles belong to Agni, Varuṇa, Vāyu, Yama, Indra, Kubera, Soma, Savitṛ and All-Gods respectively. The circles must be besmeared with cow-dung and must be sprinkled with water. The circles should be of 32 Aṅgulas each, one after the other. With eight such circles the ground required will be of 256 Aṅgulas. There should be circles (i.e. sub-circles) according to the size of the foot of the person undergoing the trial. Dūrvās must be spread on the circles as per Śāstra, and the person should walk over these.

For the sake of pacification, 108 oblations of ghee must be offered in the fire. An iron-ball of 8 Atigulas' size and 50 Palas' weight, smooth and without any angles must be heated equally on all sides in the fire. With red-sandal (Rakta- candana), incense (Dhūpa) and red flowers, the king should offer adorations to (the Dharma in form of) Agni. Having purified himself, the person should stand in the western circle with folded hands, facing east. The person (conducting the ordeal) should mark the wounds and scars on the hand of the accused person. The marks should be detected before the trial, by rubbing the grains of rice.

Seven leaves of Pipal tree, curds, a few grains of rice (Akṣata) and flowers must be placed on the hands and must be tied with threads. The wise should put the Pipal leaves on his hands. Because the Pipal gives birth to fire, the Pipal is known as the king of trees. He should first invoke the other gods and then after heating the ball, he should invoke the fire (with these mantras)—"Oh! Agni! you are the four Vedas, you are offered oblations in the sacrifice. You are the mouth of all gods, you are the mouth of the Brahmavādin (the speaker of Brahma). Residing in the belly, you, indeed know the auspicious and the inauspicious in every being. You are known Pāvaka (Purifier) since you purify the evils. Oh Pāvaka! be full of sparks and show yourself to the sinful ones. Oh! Hutāśana! (Eater of oblations), be, otherwise, cool for the persons who are pure. Oh Agni! you remain as an inner witness in (the hearts of) all beings. Oh Agni, only you know the things that are not known to the human beings. Oh Agni! the Purifier! you remain in all beings. Oh Wise! (Having observed) like a witness the merits and the demerits, tell the truth for me. This person, who is accused in the dispute, wants to get himself purified and it will be worthy or you, if you protect him from doubt, according to Dharma."

The King devoted to the Dharma, or the person appointed by him should then take the iron ball by a fork and place it on the hands of the person. The person should not cross the circles hastily. Undisturbed, he should go slow. Neither he should skip over the circles nor should he set his foot at a distance less than the one in between the two immediate circles. After going to the eighth circle, he should throw the ball in the ninth circle. If he throws the ballout of fear or if the signs of burns are not visible, the iron-ball may be put again on his hands. The grains of rice or yavas should be rubbed on his bands and if the hands are free from burns. he must be declared innocent.

Mit. summarises the important points of the procedure in the order in which they are followed.

On the previous day—the person to be tried must purify himself (by observing fast).

On the second day— (a) preparation of the circles as per recommendation of the Śāstra. (b) adoring the respective deities of the circle. (c) invoking Agni and performing Śāntihoma. (d) rubbing the grains of rice on the hands of the person. (e) tying the Śiraḥpatra with due mantras. (f) addressing the iron-ball when it is heated for the third time and putting it on the hands of the person. (g) crossing the circles and throwing the ball.

Let us study the salient points.

(1) Preparation of the circles:

(a) *The number of the circles* :-We find that Viṣṇu, Yāj., and SL have recommended only seven circles. Nār. gives 8 circles of 32 Aṅgulas each, while according to NMS even with 8 circles of 32 Aṅgulas the ground required is of 224 Aṅgulas. Pit. recommends 9 circles.

Explaining Viṣṇu, the VP points out that the seven circles recommended here are the actual circles that are to be walked Mit. observes that since the accused person is asked to go through seven circles, we have to presuppose the eighth circle for the person to stand. Explaining the nine circles of Pit., the Mit. observes that the person stands in the first circle, and throws ball in the ninth circle which does not have any specific dimension. Thus he actually crosses over only seven circles. It is thus not against the traditional recommendations.

(b) *Method of drawing circles* :— According to Mit., there is one Avasthānamṇḍala of 16 Aṅgulas and seven circles are drawn subsequent to this Avasthānamṇḍala in such a way that each of the circle and the distance between each of the circle remain 16 Aṅgulas. The distance "from the beginning of the first circle to the beginning of the second one, thus, comes to 32 Aṅgulas. (16 Aṅgulas of the circle and 16 Aṅgulas of the space left (Antarāla) between the two circles.) The total distance would thus come to 240 Aṅgulas.

After the eighth circle, there should be a space of 16 Aṅgulas left out and the ninth circle should be ḍrawn after it. If we take into account this space after the 8th circle, the total distance would be of 256 Aṅgulas as given by Nār. and Pit.

There could be another method of drawing the circles. There should be an Avasthānamaṇḍalu of 16 Angulas and seven circles of 32 Aṅgulas each must be drawn from it, the total space thus required would be (16 x 1 + 32 x 7 = 240) 240 Aṅgulas. Each of the circle should be divided into two parts of 16 Aṅgulas each and must have seven circles drawn in them according to the size of the foot of the person undergoing the trial.

According to the NMS Bhāṣya, there should be 8 circles (of 32 Aṅgulas) joined to each other so that, each circle will have two joints; and in all, there will be seven such joints. Thus the total distance (to be walked over) with these (seven) joints will be 32 x 7 =

224 Aṅgulas. (i.e. the space covered by the first circle is not to be counted).

We are asked to draw sub-circles of the measurement of the foot of the person. If the foot of the person is smaller, the sub-circle would fall within the main circle, if it is large, it would cover a part of the space left between the two circles, there would therefore be a smaller distance between the two circles.

It should be observed that the circles should be drawn in a straight line from west to east. The person stands in the first i.e. the western-most circle, facing east. According to SC the circles should be drawn before the famous temple or the place recommended for the ordeals. According to Kkh the circles should be drawn before god Sun.

(c) *Adoring the respective deities of the circle*: The nine circles recommended by Pit. are Āgneya, Varuṇa etc. SC points out that these words must be taken as the examples of Samākhyā. Just as the word Hotuscamasah in the mantra' Praitu Hotuścamasai,' means that the bhakṣaṇa in the camas belongs to the Hotṛ, the word Āgneya means 'the circle in which Agni is worshipped'. It thus follows that after sprinkling water on these circles, the respective deities must be worshipped.

(2) Invoking Agni and Performing Śāntihoma

Mit. points out that the Prādivivāka should offer 108 oblations of ghee in Agni with 'Agnaye Pavakāya Svāhā' as its mantra, on the southern side of these circles. According to SC, a Santihoma can also be performed alongwith this. The Śāntihoma consists of offering oblations of ghee to the deities like Vasu, Āditya, Rudra and various Lokapalas with mantras like Ākṛṣṇena rajasā etc.. The performance of Śāntihoma is, however, optional. The iron-ball must be heated in the fire to which the oblations are thus offered.

Offering of the oblations and performing the śāntihoma were the later additions in the procedure. The SC points out that since Viṣṇu and Yāj. refer to the signing of the hands by rubbing the grains of rice directly after asking to prepare the seven circles, the oblations and the śāntihoma were not required to be performed according to these writers.

(3) Rubbing the Grains of Rice

(a) Before the Trial:

The Smṛtikāras have asked to mark the signs such as mole, wounds, scars etc. on the hands of the person, after detecting them by rubbing the grains of rice on his hands. The marking must be made by the Alaktaka dye and may be in shape of the Kākapada or the Haṁsapada. This marking is absolutely necessary for distinguishing the old marks from the signs of burns caused by carrying the iron-ball, which decide the judgment of the trial.

According to the Kkh, the person must be asked to stand in a square-maṇḍala while rubbing the grains of rice.

(b) After the Trial:

Dh. writers have asked to rub the grains of rice again, after the trial. The grains must be rubbed pressingly, seven times, on the hands of the person. This helps in making. the signs of burns more clear, if they are not sufficiently visible. Accordmg to Viśvarūpa, it also helps to know if any deceipt is resorted to by the person.

(4) The Iron-ball: Heating and placing on the hinds of the person

(a) Heating the Iron-ball:

As per recommendations, the iron-ball must be of 50 Palas' weight. It must be smooth, even and without any angles. It must be of 8 (or 12 according to KP) Aṅgulas' size. SL recommend it to be of 16 Palas. VP points out that the iron-ball is said to be of 16 Palas weight, but this is optional. According to some, however, it is recommended for the weak persons.

The ball must be heated proficiently as the blacksmiths would do i.e. it must firstly be heated severely and then dropped into water. This must be repeated for the second time. By doing so, the iron gets purified.) Well-protected (i.e. untouched by Ciṇḍālas) it must be heated for the third time and then placed on the hands of the person. The ball must be heated equally on all sides. The ball must not be heated by any layman but by an expert. Asahāya points out that the person who heats the ball, must have got a training in the blacksmiths' tradition and must have a constant practice of heating iron. He must be experienced i.e. must have heated iron in other ordeals. He must not be a person having a casual training.

(b) Placing the ball in hands :

Seven leaves of fig tree or pipal tree or the Śami tree and the Dūrvās should be tied on the hands of the person with seven threads. The threads must be white. According to the Kkh. they must be freshly prepared from the cotton. Curds, flowers and the grains of rice also must be put on the hands before placing the iron-ball.

(5) Invoking the Fire:

Viṣṇu, Yāj. Nār., and Pit. have given various mantras for invoking the fire. Yāj. has given only one such mantra for the purpose, while Viṣṇu gives two. The SC points out that both the mantras given by Viṣṇu are to be used together for addressing the fire. They cannot be treated as in each other's option because both of them have distinct purposes. (The first mantra glorifies the Agni, while in the second mantra, the Agni is requested to make the person free from doubt).

If we study the mantras given by Pit. we find that some of the mantras are of his own, while the rest of the mantras are the same as those of Viṣṇu. (Using the same argument as that of SC), VP points out that all the mantras together make a complete prayer and, therefore, all of them must be used together. They cannot be used in each other's option, because they have distinct purposes.

The SC points out that the mantras given by Nār. and those given by Viṣṇu and Pit. are in fact meant for a similar purpose and, therefore, both must be used in each other's option.

It is interesting to note with reference to these mantras that Nār. expects the contents of the mantras to be written on the Śiraḥpatra.

(6) Signs of the success or the failure of the Trial:

After carrying the iron-ball up to the 8th circle, the person should throw it in the 9th circle. If it burns him, he is guilty. If he is unburnt, he is innocent. The burns may not be detected immediately after throwing the ball, but may be inspected and known only after a lapse of time, points out Vyavahara vivekodyota. Gerund Ktvā (in Muktvāgnim mditavrīhiḥ) should, thus mean Pūrvakālatā and not Ānantarya because of the following reasons— (i) vide Pāṇini III. 4.21 (ii) it is also supported by the Mīmaṁsā rules (Jaimini IV. 3.36 and II.3.48) e.g. In 'Prabrtya paridhii'ljuhoti' the gerund has been taken as meaning Pūrvakalatā (iii) In popular examples like' Bhuktvā gacchati, ' the person does not start walking immediately after meals.

The trial is said to be indecisive if the person throws the ball before reaching the seventh circle or if the signs of burns are not clear. The grains of rice are to be rubbed for making these signs clear and to detect that no deceipt (Kuhaka) is resorted by the person. If any deceipt is detected, the person is required to carry the iron-ball again. Tbe DT points out that the whole procedure should not be repeated in such a case.

Kāt, points out that if the person is found burnt on any other limb (i.e. other than the hands) he cannot be considered as guilty.

Thus, if we study the details of the fire ordeal, we find that the Dh. writers have made this ordeal as mild as possible. Taking into consideration the following points— (i) It is favourably recommended in the rainy or the cold season. (ii) It is conducted in the morning. (iii) The person comes fresh after taking bath with we clothes on. (iv) Seven leaves are tied on hand with seven threads. Curds, flowers and grains of rice are also put on the hands. (v) Long prayers intervene before the hot iron ball is actually placed on the hands. (vi) Person walks just seven steps (7 or 7½ feet) with this ball—we find that the Dh. writers have hardly kept anything dangerous or risky in this trial.

We have numerous examples of the fire ordeal on record in which the persons have successfully undergone the trial. This, in fact, supports our above conclusions. It must be pointed out that the fire ordeal was uniformly popular in all the parts of India. It was an extensively practised ordeal.

B

BHU-BHARANA, BHŪ-PĀLANA, BHŪ-BHOJANA

The attributes of the Indian king have long been familiar, but taken together they have an inexplicable feature—their apparent incompatibility. An explanation for one, *bhu-bhojana*, is hinted at by J.J.Meyer's *Trilogie altindischer Mächte und Feste der Vegetation* (Zürich and Leipzing, 1937), and the setting in which the subject is to be reviewed has been entirely recast by the lengthy and exhaustive article by J. Gonda, entitled 'Ancient Indian kingship from the religious point of view' (*Numen*, III-IV, 1956-7). It is much to be hoped that these works will not escape the notice of historians of India, and it is assumed in this paper that Professor Gonda's article is accessible to the reader.

The question posed here is, in itself, narrow. Why was the king supposed to be the Earth's lover or husband, and what is the significance of the metaphor? In the *brahmanas* we know that the Earth is called the wife of Agni and of the *Devas*, but why is this relationship posited of the king? The mythological marriage to Pṛthu we take for granted, but he was not her last 'husband'. This is not merely poetical imagery, nor, as we shall see, does the Earth stand, metonymically, for her inhabitants. The constant repetition of such an image implies a meeting of a fundamental concept, or psychological position, with an expression which can release it; repetition deprives it of charm, but not of validity. In the *Aitareya-brāhmana* there appears an obscure text in which one individual says to another, 'I am sky, thou art Earth'; it is usually assumed that the speaker is the king and the person addressed is the *purohita*, the context being the 'coronation' -ceremony. A.K. Coomaraswamy attempted to show, in *Spiritual authority and temporal power in the Indian theory of government*, that the roles were reversed and that the king accepted a feminine role as Earth. For reasons which appear below the argument may not now convince, but it does not seem that, apart from Coomaraswamy's pioneering venture, the problem has been probed critically in modern times. It may be that the true meaning of the *Aitareya-brahmana* text will emerge from a better acquaintance with the king's normal attributes.

Gonds amply proves the 'sacred' character of the Indian king (though he naturally hesitates to draw political conclusions from this 'sacredness') and finds Indo-European

kingship, 'in important respects', a sacred institution; but no other branch of this family of peoples has, so far as we know, seen the king as 'husband of the Earth'. For the ceremony performed by the Doge resembles, if anything, the Hindu's annual worship of the implements of his craft or trade, and Elizabeth I was 'wedded' to her people much as one is 'wedded' to principles, and the like. Indian worshippers, particularly Vaiṣṇavas, believe Cod to be related to the individual (even where the latter is masculine) as lover and beloved *(nāyaka-nāyakī-bhāva)* and the imagery used to describe the relation approaches, as elsewhere further West, the sexual. On the Tamil Alvārs see Surendranath Dasgupta, *History of Indian philosophy*, III, Cambridge, 1940, 70; on the Gaṇḍiya Vaiṣnavas see Rūpa-kavirāja (attrib.), *Sārasaṅgraha*, K. Goswami Sastri, Calcutta, 1949, with an introd. by Professor Satkari Mookerjee, which might facilitate the researches of Dr. Morris Carstairs. The sexual image is used to describe even the relationship between the (masculine) *puruṣa* and the (feminine) *prakṛti* in the Sāṃkhya philosophy. There is mutual dependence there also (cf. the *pangvandha* simile). The *puruṣa* through the aid of *prakrti* attains *mukti*, and *prakṛti* ceases to function 'just as an unchaste woman who has been found out by her husband-maintainor does not resort to her (or ? a) husband again, or like a dancing girl, who has played her part and departs'. Mādhavācārya, *Sarva-darśana-saṅgraha* (Bibl, Ind.), Calcutta, 1858, 153, where a *śloka* is cited. A comprehensive study of the scope of sexual images in Indian thought would be rewarding. But it is very doubtful whether this throws any light on our problem.

As for the Earth herself: she is the great Mother, the supporter of all living creatures. Poets compare her with the mythical Wishing-cow, or indeed with any cow. As a cow she was, says the *Vāyu- purāna*, repeatedly milked by Brahmā and others, and once Indra (to whom we shall return) acted as her calf to assist the operation. The cow is a well-recognized mother-figure in modern as well as ancient Hindu thought. The Earth pours forth streams, like a cow milk.

> *nivartya rāja dayitām dayālus tām saurabheyiṃ surabhir yaśobhiḥ* |
> *payodharī-bhūta-catuh-samudrām jugopa go-rūpa-dharām ivoruim* ||

She bears fire, jewels, minerals, and so on, in her womb.

> *kintu vadhvām tavaitasyāṃ adṛṣṭa-sadṛśa-prajam* |
> *na mām avati sa-dvipa ratnasūr api medini* ||

She is penetrated by snakes, and *bhujaṅga* appropriately means a snake or a gallant: small wonder that the Nāgas were reputed to be very handsome! She is the Queen of the snakes. Moreover she is fertilized by rain. The union of Heaven and Earth, the intercourse between Parjanya (Rain) and Pṛthivī, begets plants and is the sole (intermediate) cause of living creatures. The importance of rain-water cannot be overestimated; it is even said that all society and decency depend on rain. If Heaven is our father, Rain is also our father.

The king performs *bhu-bharaṇa. Bharaṇa* from very early times meant (i) carrying, and hence (ii) maintaining. How can the king be said to maintain the Earth? The Earth is visualized as the king's dependent. This is odd, since he mainfestly depends upon her. A mother is a maintainee if she is widowed or her husband has deserted her. The Earth is never compared to so inauspicious a person as a widow, for, even when she is deprived of her lord by his death in battle the furthest the poet will go in this direction is to admit that the *kingdom*, and of course the queens of the deceased, have been made widows. However, the king participated in, or provided for, sacrifices which were intended to secure rainfall, and one of his chief duties was to protect Brahmans whose daily offerings, ascended into the heavens and received (in a non-technical sense) by the *devas* headed by Indra, the rain-cloud-splitter, gave rise to rainfall in return. R. Aiyangar, op. cit., 82; W. Rau, *Staat und Gesellschaft im alten Indien...*, Wiesbaden, 1957, 90-2, para. 59. N. Law, op. cit., ch. ciii, 112 ff., and ch. ix (on *rajasuya, aśvamedha*, etc.) touches the fringes of our problem, but from what Gonds says (III, 41-6; iv, 162) it is plain that *abhiṣeka*, 'coronation', anointing, and the king's duty to make rain are very intimately connceted. Note that fertility-symbols and water must be looked at by a king commencing connected. Note that fertility-symbols and water must be looked at by a king commencing a *yātra:* evidently a mass of ritual data needs to be examined in a fresh light.

dudoha gāṃ sa yajnāya sasyāyā Maghavā divam |
sampad-vinimayenobhau dadhatur bhuvana-dvayam ||
havir avarjitaṃ hotas tvayā vidhivad agniṣu |
vṛṣṭir bhavati sasyānām avagraha-viśoṣiṇām ||

For this there is very ancient authority. *Ṛgveda*, I, 121, 2-5 bring together the cow, the 'parents' (who, according to Sāyana, are Heaven and Earth), the oblation they provide, Indra, and rain, in the very plainest conjunction. Thence, no doubt, ultimately we have

agnau prāstahutiḥ samyag ādityam upatiṣṭhate |
ādityāj jayate vṛṣṭir vṛṣṭer annaṃ tataḥ prajaḥ ||

Prajaḥ, like the word 'creatures' in English, means both *subjects* and 'dependants'. The Indian king's duties included the performance of the *Indra-vratam* to secure regular rain; the liberation of cows (reminiscent of Indra's exploit) in the month of Kārtika was believed to give relief from excessive or inadequate rain; and the erecting of the *Indra-dhvaja*, or 'Indra's flagstaff', as a simultaneous assertion of sovereignty and method of assuring rainfall, brings to mind parallels, to which we shall return. The righteous king secures regular rain by good government as well as by his sacrifices. Vālmíki, Ramayaṇa, I, 9, 7–8 (eds. Bombay, 1905; Banaras, 1956; cf. Gorresio, 1843, I, 8, 11-12); VI, 131, 99 (Bombay, 1905) or VI, 128, 102 (Bombay, 1919), 110, 8 (Lahore, 1944), 131, 103 (Banaras, 1956); cf. Gorresio, 1850, VI, 113, 6; MBh., XII, 139, 9: and other refs. in R. Aiyangar, *Ancient Indian polity. Second ed.*, Madras, 1935, 108. Tiruvaḷḷuva-nāyaṉār, *Tirukkuṟaḷ*, Thirunelveli and

Madras, 1949, 559, p. 213: *murai-kōdi mannavanceyyi=numi kodi= | yollādu vanam peyal.* Compare the references given in the footnote, same page. Meyer, II, 255 ff.; III 268. Gonda, IV, 162-3. Indirectly, therefore, the king maintains the Earth; but this was not enough Indirectly, therefore, the king maintains the Earth; but this was not enough for poets. Both in pure *kāvya* and in poetical inscriptions the king is repeatedly shown actually carrying the Earth. The Earth is taken up on his arm, is cradled there, is hoisted upon his shoulder, and there carried as if by an Atlas. Vālmíki, *Ramayaṇa,* I, 9, 7-8 (eds. Bombay, 1905; Banaras, 1956; ef. Gorresio, 1843, I, 8, 11-12); VI, 131, 99 (Bombay, 1905) or VI, 128, 102 (Bombay, 1919), 110, 8 (Lahore, 1944), 131, 103 (Banaras, 1956); ef. Gorresio, 1850, VI, 113, 6; *MBh.*, XII, 139, 9; and other refs. in R. Aiyangar, *Ancient Indian polity. Second ed.*, Madras, 1935, 108. Tiruvaḻḻuvanayanar, *Tirukkuṟal*, Thirunelveli and Madras, 1949, 559, p. 213: *muṟai-kōdi mannavanceyyi=mur ai- kodi= | yolladu vānam peyal.* Compare the references given in the footnote, same page. Meyer, II, 255 ff.; III 268. Gonda, IV, 162-3.

Santānārthāya vidhaye sva-bhujād avatāritā |
tena dhur jagato gurví sacivesu nicikṣipe ||
puraṃdara-śrīḥ puram utpatākaṃ praviśya paurair abhinandyamānaḥ |
bhuje bhujaṅgendra-samāna-sāre bhauaḥ sa bhūmer dhuram āsasañja ||

Only Śeṣa, the primeval snake, shares this role with the king, though, as we have seen, he shares with him another. In Kannaḍa the Sanskrit *bhū-bhuk* 'earth-enjoyer' forms the *tadbhava* equivalent *bhū-bhujaṃ* (mod. Kan. *bhū-bhujanu*), and thus *bhu-bhuja* may be used, by way of a pun, to refer to the king in both roles at once.

The second role requires little elaboration and no citation. *Bhu-palana*, 'protection' of the Earth, has been the king's duty since Kauṭilya's time at the latest. Protection implies services which distinctly recall the duties of a cowhered, and it is for this reason that King Dipípa's task in reference to the cow Nandiní was so appropriately invented.

Finally the king enjoys the Earth, much as Indra enjoys Heaven. The significance of the root *bhuj* is wide (cf. Agni's titles *havir-bhuk*, etc.), but in this context the word is precise. *Bhū-bhuk, mahí-bhuk, jagatí-bhuk,* and the other commonplace titles refer to physical enjoyments, with a distinct implication of that particular type which is thought of in India as the highest type of 'enjoyment'. *Bhogin* 'enjoyer' is glossed by Saśvata as *rāja.* Indian speakers of English refer to the enjoyment' of women in a precise sense. The king is called *bhū-vallabha*, the Earth's beloved, and when he is called-*deśa-varādhipa* we can be sure that the country is visualized as choosing him as if in *svayaṃvara*. Stories relate the Earth declaring herself the wife of a particular king. The king's relationship to her is thought of as sexual. Of this there are many illustrations, some delicate and some gross:

priyam anucitaṃ kṣmā-paṇya-strí-kṣṇa-prabhur íśvaro
remayati yato dhik tān bhṛtyan sav-vṛtti-sukhārthinaḥ ||

The same author refers to Kālidāsa's picture of the king, possessed of produce in the way of jewels from the Earth but devoid of male issue, in an apt verse:

> *sa mahīṃ rāja-kanyāṃ ca prāptavanekataḥ kulāt* |
> *ratnānāṃ ca sutānāṃ ca rājābhūd bhājanaṃ śanaiḥ* ||

When the king conquers a region he may be said to have snatched at its breasts, the mountains. When he takes a city it is described, honorifically, as a rape. There is a point at which two roles coalesce. *Bharya* 'wife', is the maintainee, the dependant *par excellence*. *Pati* and *bhartṛ* 'husband', imply 'protector' and 'maintainor'. The Earth, sitting comfortably on the king's knee, is both his maintainee and his 'enjoyed one'. She is not the only one in that position. He is *śrí-pṛthví-vallabha*, and he must be wedded to both Earth and Fortune if he is to remain king. Lakṣmí appears in various guises, such as *rājya-śí, vírya-s'rí*, and *jaya-śrí*, and is notoriously fickle. The name Srí-vallabha is an apt one for a prince. She is the king's darling (for the time being), and he has all the women-folk he needs if both Pṛthiví and Lakṣmí are faithful to him.

> *kalatravantam ātmānam avarodhe mahaty api* |
> *taya mene manasvinya Laksmya ca vasudhadhipa* ||
> *urasy aparyāpta-niveśa-bhāgā praudhí-bhaviṣyantam udikṣamāṇā* |
> *saṃjāta-lajjeva tam atapatra-cchāyā-cchalenopajugūha Lakṣmiḥ* ||

But just as Lakṣmí may be unfaithful, Pṛthiví is not less capable of being divorced and remarried, and the Earth is enjoyed by many kings, as the adage goes, from Sagara in succession. So he 'enjoys' the mother of all creatures: yet we shall not proceed far if we assume that he suffered, professionally, from an Oedipus complex.

The mystery surrounding the epithet, 'enjoyer', is heightened by its total absence from *dharmaśāstra* literature. By way of *stuti* those texts tell us that the king is made up of the 'heavy' particles of many deities and deserves obedience, etc., and by way of *adeśa* the king is warned of the effects of anarchy, the extent of his responsibilities, and the need to control his natural proclivities. In the *Arthaśāstra* the notion that a kingdom is to be enjoyed is asserted at an early stage, but the image of the king's conjugal relationship with the Earth is not found. The Earth is *artha;* the king is *arthapati;* but the king's exploitation of the Earth is regarded as a duty requiring no such justification as this.

It might be suggested that the *smṛtis*, despite their occasional poetical turn, are practical works, not in need of poetical images; while, on the other hand, moral responsibilities are incompatible with the freedom of behaviour suggested to an Indian by this notion. But this is not true. The special relationship, so far from being foreign to the

śāstra, is required to explain legal facts; and figures of this are intimately connected with very practical concepts. So long as the king treats his 'wife' in a husbandly fashion he is acting distinctly in accordance with *dharma*. The king's legal rights were *bhogas* ('enjoyments'), and when these were passed on to tenants by grant the latter estimated the value of their tenure in terms of the number of *bhogas* it involved. Grants reserving certain rights, particularly in cases of disobedience, laid down in the grants themsolves, are well authenticated. The nearest to an 'out-and-out' grant was that of *aṣṭabhoga-tejas-svāmya*, in other words *nidhi, nikṣepa, pāṣāṇa, siddha, sadhyā, jala, akṣiṇi*, and *āgāmi*, on which see the verse cited by F.W. Ellis in his letter to the Madras Govt. dated 2 August 1814 (?). pub. C.P. Brown, *Three treatises on Mirasi right...*,Madras, 1852, at p. 17. n. 49; also A.K.Majumdar, *The Chaulukyas*, Bombay, 1956, 248; and cf. A. Master, 'Some Marathi inscriptions, A.D. 1060-1300', *BSOAS*, XX, 1957, 428-9. Majumdar, cit. sup., is most useful on the king's rights, and one may usefully consult S.K. Maity, *Economic life of northern India...*,Calcutta, 1957. In revenue terminology *bhoga* means, apparently, the right to maintance from the inhabitants when in their vicinity, as contrasted with *bhāga*, the regular share in the crops by way of land-revenue. In Indian law *bhogas* were easily severed, and, for example, land could be sold without the right to use a well in it, and trees could be sold, leased, or mortgaged, without affecting the ownership of the soil. With two exceptions the king was 'lord of all'. MM Dr. P.V. Kane has discovered in an unpublished work a *śloka* of unknown authorship but unquestionable accuracy. The point it makes is elaborately worked out in *dharmaśāstra* and *arthaśāstra* texts.

dhanānām īśvaro rājā Brahmaṇā parikalpitaḥ |
bhū-gatānāṃ viśeṣeṇa, bhartā' sau vibudhādhipaḥ ||

He translates up to the comma as follows: 'Brahmā arranged that the king was (to be) the owner of all wealth and specially (wealth) that is niside the earth'. He does not proceed, but one may point out that quite literally, the remaining quarter-*śloka* says, 'the bhartṛ ('husband', maintainor', master', 'lord') is he, <*videlicet*> the "overlord of the gods" (i.e. Indra)'. Thus the labour of the *prajaḥ* was his to tax, whether by forced labour or otherwise. A full list of his actual exactions from them would be lengthy and uncessary. Sufficient attention, however, has not been given to the right to fruit, vegetables, grain, fodder, lodging, conveyance, and the like, which he and his court enjoyed when on campaign or progress. The political and social effects of this right, and of the illegal exactions of the royal purveyors by virtue of their ill-defined authority, were enormous: it typified the king's position admirably and, incidentally, was inherited by the East India Company. Many land-grants provide that the demesne shall not be entered by *caṭas* or *bhaṭas* (who would levy contributions on the pretext that the court required them). On the abuse called *begari*, see Bengal Regs. XI of 1806 and III of 1820; T.K. Banerjee, *Administration of criminal justice...*[thesis], London, 1955, 135, ff. No less significant is the ract that jurists

saw the king exercising his rights over the soil and its produce when he confiscated a delinquent's property (a common punishment), and when he seized it or auctioned it in execution of a decretal debt or for default in payment of revenue. Jagannatha-tarkapañcānana, *Vivāda-bhaṅgārṇava*, I.O. MS Skt. 1770=Egg. 1534, f. 5= Colebrooke's *Digest*, Madras, 1864, I, 306-7. Kātyāyana (Kane's text), v. 16, and editor's comments thereon, p. 121, n., also Kane, III, 189, n. 243. The king's right to taxes was sometimes attributed to the tax-payer's own motives (e.g., Aparārka on Yājñ, 366, cited Kane, III, 38-9), but this does not diminish the king's rights in respect of the soil.

Perhaps it is in this way that we may explain a curious, if notorious, fact of Indian history. A king's sovereignty extended to his boundaries; dissatisfied subjects merely decamped to his neighbour, who at once became their ruler. This right to change one's allegiance was never questioned or hampered; the simplest way to rid oneself of loyalty to a ruler was to change the soil under one's feet: a position which no modern and few western medieval States could tolerate.

The king's ultimate lordship of the soil would not still be open to debate, if some Indian historians, misled by publicists early in this century, had not assumed that ownership in India was like ownership in England, and that there was something unsatisfactory about concurrent, though distinct, rights of ownership in land between the ruler and the ruled. A. L. Basham, *The wonder that was India*, London, 1954, 109 ff.; Derrett, 233 ff.; Maity, 15-23; Gonda, IV, 128, n. 656. The less satisfactory view continues to be stated by epigraphists, such as MM V.V.Mirashi, and historians, e.g. Professor Nilakanta Sastri, ubi cit. sup. Sabara on Jaimini, VI, 7, 3, is widely misunderstood. The king who serves the Earth by 'upholding' and being valorous has no exclusive ownership over the Earth that can be given to priests, but only the rights not already assigned to the subjects. These could be, and often were alienated in religious donations–and sometimes bought back again! In medieval times the monarch seemed incredibly forbearing if he paid for a plot of land he required for his own purposes. In order to 'satisfy' the subjects a king observed certain conventions—yet the former were always complaining that in practice the king's agents interpreted them too far in their master's favour. But his inherent superiority in the allocation of 'enjoyments' was a source of pride, and not resentment. It was only when foreigners were found utilizing the very large benefits of this situation to their own advantage, that Indians awoke to the undoubted peculiarity of their *rāja's* position, and, if they were educated in Western ideas, rejected it.

Most remarkable among the exceptions were the immunities of Brahmans, personally and in respect of their property—immunities which were on the whole carefully observed. R. Aiyangar, introd. to *Rājadharmakāṇḍa*, 54 ff. Kane, II, 190, 228, 384, 762, 942. A fundamental text commences *na viṣam*, ibid., p. 1273, No. II. On Bhats and Charans in western India in the eighteenth century see J. Tod, *Annals and antiquities..*, II, 500; J.Forbes, *oriental memoirs*, 1834, I, 377-80. Chintaman Rao, negotiating with Elphinstone in 1819, demanded that Brahmans should be exempt from *begāri*: K. Ballhatchet, *Social policy and social change..*, London, 1957, 68. Some, they protested at the coronation (or rather the 'sprinkling

ceremony'), was their king. The śastra makes no effort to conceal the king's debt to the Brahman community and his duty to facilitate their work. It is easy to understand that property nominally belonging to the *devas* was immune from the king's lordship, so long, that is to say, as necessity or temptation was not too strong for his piety.

It may be urged that the *śastra* at length saw the king's *bhogas* as a repayment for his services in *prajā-pālana*. It is boldly asserted (e.g. in Narada, XVII, 47) that revenue is the king's wages. But this argument is unrealistic. No one imagines that he 'enjoys' his human dependants in right of wage, as it were, for maintaining them: it is quite the other way about. We need not investigate here the quite relevant Indian notion that while the *bhṛtya* must be supported by his master, the *bhartṛ*, at the same time the *bhṛtya* himself supports the *bhartṛ*: this reciprocity at first seems a paradox, but, like many such, expresses a nexus of psychological attitudes implicit in a stable relationship. We must accept that, just as *bhṛti* means *wages*, so, notwithstanding this important notion, the *bhartṛ* maintains wholly or in part in lieu of wages, as every widower who marries his housekeeper will readily affirm. Moreover the notion that the ruler is the servant of the people, agreeable in times of revolution and the like, does not accord with Hindu traditional sentiment. He shows his qualities by lending a ready ear to their grievances, and so on, but is emphatically if not always their leader, at any rate the *prajā-svāmi*, their lord. Even to those not actually employed in the royal household he is *annadātṛ*, the 'giver of food'. Without him the stronger would roast the weaker, like fish on a spit: no exaggeration, as everyone knows. Perhaps the reference to the king's relationship to the Earth cannot be found in the *śāstra* because the jurists wanted to minimize a feature with which the public were all too familiar, and which tended to impede their inculcation of the *śastra's* chief lesson, namely that, 'divinity' or not, the king must not consider himself a superhuman being and must concentrate on his duty and not upon the delights which his position may afford. Gonds rightly points out the distinction between the divine kingship and the all-too-human individual who represents it, and the anomalies to which this distinction gave rise.

Another suggestion is made, that in the phrases cited the word *bhū* really stands for *prajāh*. He maintains the public, fostering the good and rooting out the 'thorns'; he protects not more by warding off attacks than by increasing his material resources; and where there were no inhabitants there was, it is alleged with doubtful authority, no kingdom. But this will not serve. For *praja-bhojana* is a revolting concept. The king, given normal conditions, is no parasite; rather it is upon him that all the *prajāḥ* depend. If they contribute to his maintenance by their labour, his own contributions serve, in precisely the same way, to support the Brahman community. Even in emergencies, when he may take the goods of wealthy merchants, he is not acting parasitically, for his authority to do this is not challenged. It is only if they stop 'feeding' him, or fail in their duty, or he is overcome with greed, that the relationship breaks down, and he 'preys upon' them. This is distinctly a morbid, and not a normal characteristic. Nor is this a case where reciprocity applies, for one does not hear of *bhṛtya-bhojana*, where, if anywhere, such an expression might have been expected. All the difficulty lies in the word *bhojana*, which calls to mind the harem, who certainly do not support their master except in very peculiar circumstances. It is true

that the *rāja*, the *rāja's* friend, and the dacoit, are the conventional hazards that beset peaceful citizens, but this is not evidence of *prajā-bhojana*—for who has heard a thief described as 'enjoyer of the robbed'?

Perhaps it is Indra who provides the explanation. He and his ancient colleague or substitute, Parjanya, give or withhold rain, and similarly, and perhaps accordingly, all wealth. Like a real king Indra divides the spoil between his dependants, and in return for offerings is believed to be m orally bound to provide cattle. In the *Rgveda* he is plainly the embodiment of brilliant power, loosing the bound, opening up the riches of enemies to his followers, and stimulating the warrior and raider. The notions of violent robbery and impregnation seem to be linked. Ruler: *RV*, VIII, 37, 3. Bull, lord, 'rainer', protector, 'showerer': *RV*, I, 7, 8; 9, 4; 10, 10; 32. Even in countries where rainfall can be a nuisance 'showering belessings' is an accepted metaphor—and, since we have mentioned a Western usage, are not the uses to which the English word *husband* is put significant in our context? Was he called the king of the *devas* because he shared these attributes with the earthly chief, to whom he is constantly and tediously likened? He is *bhu-śakra* ('the Earth's Indra'?): Srí-Harṣa cited *Sūkti-muktāvali*, Baroda, 1938, 338, No. 25. *MBh.*, XII, 67, 4; *Arthas'.*, 1, 13. The king's mother is Indra's mother: AV, VI 38; his bow Indra's weapon: Gonda, III , 131. *Rajat.*, 1, 99, 100, 174; II, 63; III, 329, 475; IV, 108, 164, 194, 217, 372; and so forth. Indra survived in *abhiṣeka* ceremonies and the rituals for increasing sovereignty; and also in the South Indian *pongal* festival, upon which see Meyer, III, 118 ff. Gonda takes the identification as established: III, 63-4, 134, 138; IV, 51. What is the relationship of Indra to Gautama Buddha? The concept of Indra held by Buddhist writers is sketched ibid., III, 144. A prayer in the *Atharva-veda* seeks to make the 'sprinkled' king like Indra, in order that the people may have rain; the warrior king in history sought 'Indra-hood' in this very life. The very word *kṣatriya*, says Sabara-savāmi, calls to mind Indra. If Indra is not precisely wedded to Pṛthivī, Parjanya certainly is, and there is a complete parallel. Earth is the mother, Parjanya (we have seen) is the father, and Parjanya is therefore (like Indra) our ruler. Sudakṣina, hoping that her expected son will enjoy the Earth as Indra enjoys Heaven, takes to eating soil...

> *divaṃ Marutvān iva bhokṣyate bhuvaṃ dig-anta-viśrānta-ratho hi tat-sutaḥ* |
> *ato 'bhilāṣe prathamaṃ tathavidhe mano babandhanya-rasān vilaṅghya sā* ||

Since they are of a kind, the king and Indra are on visiting terms. Like Indra, the king is a 'rainer'. Gonda, who notes the parallelism, points to the mystical possession of *ojas* ('creative vital energy') as a kingly quality. Similar expression deserve scrutiny. *Retas* 'rain-water' also means 'semen', and it is with *retas* that Parjanya *satisfies* the Earth. Modern Indian speech employs 'water' as a euqhemism for several fluids, and the *Bhagavata-purāṇa* in an odd story about Indra sees a large range of fluids with distinct fertility-connotations as mystical representatives of rain-water. The root vṛṣ 'to rain' has a most ancient duality of meaning: it suggests the pouring or scattering of generative fluid. *Vṛṣa*

implies any male animal, and the mightiest of its kind. The *Atharva-veda* prays for sovereignty even over Indra, over Heaven, and over the Earth, for the chief, in these suggestive words:

> *vṛṣendrasya vṛṣā divo vṛṣā pṛthivya ayam* |
> *uṛṣā viśvasya bhutasya tvam ekavṛṣo bhava* ||

Vṛṣabha, with which the *Ṛgveda* compares Parjanya and Indra, came to be a bull, but how did *mahiṣí* come to mean 'chief queen' when its principal meaning is 'she-buffalo'? Wilhelm Rau recently pointed out the curious connexion here between the Queen, a cow, the Mother, and the Earth. The king is a bull amongst men; the idea of a king growing past potency in office is distasteful to traditional Hindu notions, and the large (but curiously often unfruitful) harem was always an ostensible sign of the king's possession of the necessary qualification. Two classes of humans should not die a natural death: they should be buried alive or drowned, starve themselves to death, or, in the case of the first only, die in battle or of wounds received in battle. These are the king, and the *sannyasi*. It has been observed that they are the only persons to possess *tejas*, that characteristic Indian attribute of males, and they are the only persons marked out for their possession—though in different contexts and for different purposes—of abundant semen.

> *pṛthiví sarva-bhutānāṃ janitrí tad-vidhāḥ striyaḥ* |
> *pumān prajā-patis tatra śukraṃ tejo-mayaṃ viduḥ* ||

And what is the *yaśas* of the king, the clear white fluid fit to be drunk, particularly by dependants or those humiliated? Drinking fame is a notable Indian metaphor.

> *sa nandinī-stanyam aninditātmā sad-vatsalo vatsa-hutavaśeṣam* |
> *papau Vasiṣṭhena kṛtabhyanujñaḥ śubhraṃ yaśo mūrtam ivatitṛṣṇaḥ* ||
> *bhūpeṣu kūpeṣv iva rikta-bhavaṃ kṛtvā prapāpālikayaiva yasya* |
> *vira-śriya kirti-sudhā-rasasya diśāṃ mukhām praṇyi-kṛtām* ||

A prolongation of Morris Carstairs' brilliant discoveries in the psychological connotations of white fluids, white foods, and related matters, may throw light on this question.

Apparently, quite apart from considerations of 'sacredness', the Indian king was first and foremost a male. Royal titles, like Dhārāvarṣa, Akālavarṣa, Amoghavarṣa and so on, combine the 'raining' and masculine attributes. At the 'coronation' fluids, viscous and clear, play varied and essential parts. Just as *abhiṣecana* with water over the head is essential for the king's authority, so the *dharmaśastra* recommends that he be *abhiṣikta*

annually and on special occasions. We wonder what is behind the symbolism of the *vasordhara*, which as Rangaswami Aiyangar pointed out may be performed to destroy enemies, at anniversaries of *abhiṣekas*, or the births of princes, etc., and mimetically promises the 'shower' of wealth and other blessings which the devas give in return—a 'shower' which pours over the head of the sacrifier, i.e. the king himself. For the rite consists in a very slow trickling of ghee into a consecrated fire kindled at the bottom of a pit in the middle of a dwelling. The learned commentator, quoting Kālidasa, points out that here showering, sprinkling, blessings, martial potency, and reciprocity between Heaven and Earth are all inextricably associated: and doubtless we might go further. Why does the king have to errect the 'flagstaff of Indra', on which there seems to be a large literature, and which is, as Meyer has abundantly proved, as much a phallic symbol as any of the poles, *liṅgams*, obelisks, *viragals*, or other tall stones, whether actually worshipped or not? For the sake of rain and 'to become lord of the world' he erects what Gonda identifies as a maypole. For fertility southern Indians to this day pour ghee on the tall stones erected to commemorate the deaths of heroes in battle, and such stones are erected elsewhere to assert prestige, and to secure good crops. Planting columns was a sign of virility and a sop to vanity as much in India as in the West: one planted a Kadamba tree in one's own soil and a 'column of victory' in one's neighbour's.

Perhaps the king was the lover of the Earth because of the physical prowess constantly attributed to him *ex officio*. It enabled him to capture her as the *kṣatriyas* were supposed to capture their brides. Perhaps he felt towards her that peculiar complex of animal power, jealous subjection, dutiful protection, and fearful worship which has been observed between husband and wife in orthodox Hindu societies, where marriage still takes place in childhood and precedes love. Is the phrase *bhu-bhojana* an admission that the king's possession of the Earth was not different in kind from an ordinary citizen's possession of his wife? If so we are a long way towards understanding the attitude of the subject towards his king as a second father, an attitude which alone made possible the deviations on the part of kings from what was admitted on every side to be their duty. Perhaps the whole notion grew from the primitive observation that extraverted zeal and physical prowess, the absolute requirements of a successful brigand or champion, were in some way associated with *virya*, a characteristic inseparable from possession of abundant semen. Similarly, though perhaps by coincidence, the power that enabled a chief to possess the Earth, whether personally or through his dependants and associates, was thought of as a fertilizing power, for the acts of cultivation (at least in one part of India, these were acts that could not prosper without the *kṣatriya's* inauguration) must have been seen as distinctly masculine, ever since the story of Sitā started on its long journey, if not before—and hence perhaps the connexion between the king and Indra. That the king himself undertook to produce rain by keeping up brahmanical offerings and attending to the requirements of *dharma* may have been a secondary development.

If *bhū-palana* and *bhū-bhojana* have happily coalesced, what remains to be said of *bhū-bharaṇa*? If the enjoyed one is kept happy one aspect of *bharaṇa* is accounted for, but what

of the other? Is the physical carrying another secondary development, made at the time when the king discovered that rule was a burden? A wife is *bharya* because she was originally carried along, and thence her master's responsibility. The Earth could hardly have become a burden because she was a wife, but rather because protecting her became burdensome. Prajaḥ are not in any case a burden, any more than they are enjoyed; dependency along must have ceased to imply a burden long before the king's responsibility appeared as such. But if we assert that the image of the king with the Earth upon his shoulder is a derivative notion we are not rising above conjecture, since the Ṛgvedic *sūkta* we have already consulted (i, 121, 2-3) explicitly tells us that Indra *holds up* the Heavens for the good of creatures, while in the *Atharvaveda* we find the prayer, 'may you stand firm in the world like Indra and may you uphold the kingdom!'. There are evidently depths to this problem which can hardly be plumbed with assurance, though we may attempt to apprehend them. There remains a fact, however, which it may be presumptuous to claim as a clue, but seems worth citing. The word used in the *sukta* for 'holding up' is derived from the root *stambh* 'to prop up'. Now *stambha* is a pillar. We are told repeatedly that a king supports the world on his arm, which is 'like a pillar', very much as Krishna holds up the mountain. The arm-pillar is of course a phallic symbol. Hindus believe the three worlds to be supported upon a pillar. The pillar on the round flat ground (the flatness has its significance, and the roundness no less) at once calls to mind Mahadeva, the predominant fertility deity. But we have also the reverse, the pillar, apart from other characteristics which do not seem relevant here, holding up the three worlds in the form of a (? flat) inhabited place. A commonplace stanza says this is Siva, the Phallus.

namas tuṅga-śiraś-cumbi-candra-camara-cārave |
trailokya-nagarārambha-mūla-stambhāya Saṃbhave ||

If Indra propped up the Heavens, perhaps because by splitting the clouds he reinstated daylight (he is elsewhere said to have placed the sun in the sky), we are told also that he kept Heaven separate from Earth. But in the same *sūkta* (i, 62, 7), Indra not merely keeps them apart, but also upholds them. The *dyāvapṛthivi*, who appear with Indra in several contexts, sometimes supporting him and sometimes supported by him, are actually held by him, and the commentator Sāyaṇa goes out of his way to point out that this may well place Indra in a (characteristic) measculine role, and Heaven and Earth in feminine roles, while the holding may be a maintaining or nourishing.

dvita vi vavre sanaja saniḷe ayasyaḥ ayasyaḥ stavamanebhir arkaiḥ |
bhago na mena parame vyomann adharayad rodasi sudaṃsaḥ ||

(Sāyana:)...*rodasi* dyāvāpṛthivyau adhārayat apoṣayat. yadva. *mena* iti stri-nāma. tathā ca Yāskaḥ: menā gnā iti striṇāṃ menā mānayanty enāḥ (Nir. iii, 21) iti. stri-rūpam āpanne

rodasi Indro' puṣyad ity arthaḥ.

Thus Indra, the personification of the masculine, the prototype of the column of victory, hears up, supports, maintains and protects—or was thought to do so by the very people who attributed the same characteristics to their kings. Masculinity, it seems, may be the key to all this. The *yoni* that is the Earth requires, it seems, the *liṅgam* that is the King. Should this ultimately be proved, its effects upon our understanding of Indian social and political history cannot be small, and one of the origins, if not the chief origin, of the 'divinity' of Indo-European kingship may have been discovered.

C

CARAKA SAMHITA ON THE DOCTRINE OF KARMA

The study of karma in the traditional Indian medical system, Ayur-veda, shows how conflict between fatalistic aspects of an indigenous traditional concept must be reconciled with a practical system which necessarily assumes that the course of many human ills is not predetermined. Consequently, *Caraka Samhita* (*Car.*) must cope with those aspects of the karma doctrine conflicting with preeminent claims of medical efficacy. *Car.* deals with karma in the context of two issues: as it relates to embryology and as it relates to the etiology of various diseases. To some extent each assumes a need for medical interventions, and the flavor of the karma doctrine advanced in *Car.* reflects that situation accordingly. Where interventions are not required, as in the explanation of the coming together of semen, blood, and the other components at the moment of conception, substantial alterations of the traditional concepts are not required. Here they are adequate, even useful, and *Car.* refers to them. Where interventions are suggested, including procedures to bring about the birth of a healthy male child or to restore a sick patient to health, these traditional ideas about karma lead to contradictions, and the adjustments made by *Car.* will be discussed.

As in the Puranas and elsewhere, karma and fate (*daiva*) are equated and used interchangeably. These are contrasted with actions in the present life (*purnsakara*).

Fate is to be regarded as self-inflicted,
    an action (*karman*) of a prior incarnation;
There is also a person's action
    that he does here.
Precedence by one or the other depends upon their relative strength.

Actions are either powerful, lacking power,

or both;
Thus, three types of karma are observed:
base, moderate, or superior.
Weak fate is impeded
by individual action
On the other hand, one's action
is impeded by preeminent fate.

Karma is defined as an action requiring some effort, and both karma and quality (*guna*) are inherently related 10 substance (*dravya*), in which they abide. Karma is required for all associations and separations, and causality stands as a fundamental precept. Causality serves as a rationale for the karma doctrine and explains seemingly unexplainable situations. The principle of causality also implicitly establishes the validity of the empirical context on which the clinical practice of medicine is based.

The essential conflict between the deterministic implications of the karma doctrine and the need to act, though especially salient in the medical context, has also been addressed elsewhere. Despite the implications of fatalism of karma in the Puranas, Dharmasastras, philosophical texts, and story literature, numerous means by which it may be circumvented are included, and they are often central. Wendy O' Flaherty refers to a didactic aspect of the Puranas which praches, "If you decide 'What is to be, will be,' then the medical books are in vain, and all the sacred recitations and all effort is in vain." And "Lazy men and those who depend upon fate never obtain their goals." This view, that since fate cannot be fathomed all effort is invested in human activity, is tacitly incorporated as a basic premise in *Car*. The relationship between the passive aspect of karma (i.e., *daiva*) and the active, the deed one performs, is not explicit, although there is a sense that the latter can prevail. The use of *karman* in the active sense as a remedy is routine in the medical texts. Reference to the passive sense usually specifies the *result*, *fruit*, or *time* of maturation of karma, employing the genitive inflection of *karman*.

The means of overcoming the effects of karma advanced in the Puranas, Dharmasastras, and the rest, namely, gifts to Brahmins, Yoga practice, pilgrimage, and so forth, have their analogues in Ayurveda. The treatment of many disorders includes *bali* sacrifices and other ritual observances in such detail as to resemble passages from Dharmasastra, especially for disorders attributed to exogenous (*agantu*) factors which are less susceptible to physiological interventions. As a principle it is maintained:

Thought, word, and deed (*karnun*) properly bound,
clear-headed with sparkling judgment,
Intent in his practice of austerities and knowledge—
diseases do not befall such a man as this.

Other passages explain the onset of specific disorders as the result of inauspicious karma.

> Exogenous insanity *(unmada)* is caused by (he assault of
> Gods, Seers, Gandharvas, Pisacas, Yaksas, Raksasas,
> and Pitrs;
> And it is the result of improperly executed religious
> vows and promises, and so forth, or, karma in a previous life.

Susruta Samhita (*Su.*) is more reluctant to cite karma as an etiologic factor. *Su.* 1.24 is a chapter providing a detailed etiologic schema. It contains many ideas also found in *Car.* but some that are not; and it lacks some that occur in *Car. Car.* has no such chapter devoted exclusively to etiology and does not include such detail; *Su.*, however, does not include karma. A category of supernormal factors, *daivabalapravrtta,* refers to curses, spells, and demonic wrath, and so forth, on the one hand, and lightning and natural disasters, and so forth, on the other. *Daiva* here is more directly related to the Devas in contrast to *Car.*, where *daiva* is often synonymous with karma. This and the emphasis on surgical procedures characteristic of the Dhanvantari tradition represented in *Su.* distinguish it from the other early texts in the mainstream of Ayurveda, the remaining two of the so-called great three (*brbattrayi*), namely. *Car.* and Vaghhata's *Astangabrdaya Sambita* (AHr,).

According to the tradition delineated in *Car.* 1.1, Indra was requested by a group cf seers to deliver the medical doctrine to their representative, Bharadvaja, who then taught it to the other seers, among them Atteya Punarvasu. Atreya trained six disciples, including Agnivesa, Bhela, and four others. Agnivesa was the principal among these and the first to compose an instructional text to preserve the doctrine of Atreya. Colophons of *Car.* and 6.30.289—90 indicate that the composition of Agnivesa was called the *Agnivesa Tantra* and that it was reconstructed by Caraka. Part of Caraka's revision was lost or never completed, and Drdhabala completed the adumbrated version, finishing the last two of eight books and seventeen chapters of the sixth book. Drdhabala may also have worked on other chapters as well, and the question of whether he did, and if so, on which chapters remains problematic. The organization of *Car.* at the time of Drdhabala is also uncertain, and so the matter of which seventeen chapters of the sixth book are indeed the last seventeen is unsettled. The date of composition and revision by Caraka is estimated to fall within the first 300 years A.D. and the revision by Drdhabala at approximately A.D. 500. It should be noted that whereas *Su.* is generally considered to be essentially the composition of its namesake, Caraka is believed to be the reviser rather than author of the work bearing his name. In large measure *Car.* contains the pronouncements of Atreya frequently offered in response to questions posed by Agnivesa and the other disciples, and sometimes in response to challenges made by a Bharadvaja, not Atreya's teacher, and others."' In addition to elaborations of the Atreya doctrine by a later auihor(s), one finds verses, some of which may be surviving the *Agnivesa Tantra*. An adequate elucidation of the relationship of *Car's* component sources as they contribute to the text requires further study.

Predetermined Life Span

Dasgupta has commented on Car.'s facility in dealing with conflict between an immutable karma doctrine and medical efficacy.

> [Nowhere else] do we find the son of common-sense eclecticism that we find in Caraka. For here it is only the fruits of extremely bad actions that cannot be arrested by the normal efforts of good conduct. The fruits of all ordinary actions can be arrested by normal physical ways of well-balanced conduct, the administration of proper medicines and the like. This implies that our ordinary non-moral actions in the proper care of "health, taking proper tonics, medicines and the like, can modify or arrest the ordinary course of the fruition of our karma. Thus, according to the effects of my ordinary karma I may have fallen ill; but, if I take due care, I may avoid such effects and may still be in good health. According to other theories the laws of karma are immutable.

By shifting the emphasis of etiology from previous lives to the present, *Car.* effectively redefines aspects of an immutable karma doctrine as mutable. In *Car.* 3.3 on catastrophic epidemics, Atreya confronts the essential issue. After discoursing on the increasing immorality and decreasing life span over the course of the four world ages leading to the present Kali Yuga, Atreya is questioned by Agnivesa, who responds to the determinative implications. "Is the life span always fixed or is it not?" he asks. Atreya replies that life span and one's power or weakness depend on both fare *(daiva)* and human effort (purusakara). Action *(karman)* performed in a prior existence is fate, and the other, *purusakara*, is what is done here. When both are noble, life is long and happy; when both are base, it is otherwise; and when they are moderate, it causes the life to be moderate. He explains that some karma ripens in a fixed amount of time and is powerful, but some is not fixed to a time and is aroused only by motivating factors. He elaborates:

> If all life spans were fixed, then in search of good health none would employ efficacious remedies or verses, herbs, stones, amulets, *bali* offerings, oblations, observances, expiations, fasting, benedictions, and prostrations. There would be no disturbed, ferocious, or ill-mannered cattle, elephants, camels, donkeys, horses, buffalos and the like, and nothing such as polluted winds to be avoided. No anxiety about falling from mountains or rough impassable waters; and none whose minds were negligent, insane, disturbed, fierce, ill-mannered, foolish, avaricious, and lowborn; no enemies, no raging fires, and none of the various poisonous creepers and snakes; no violent acts, no actions out of place or untimely, no kingly wrath. For the occurrence of these and the like would not cause death if the term of all like were fixed and predetermined. Also, the fear of untimely death would not beset those creatures who did not practice the means for fending off fear of untimely death. Undertaking to employ the stories and thoughts of the great, seers regarding the prolongation of life would be senseless. Even Indra could not slay with his thunderbolt an enemy whose life span was fixed; even the Asvins (divine physicians] could not comfort with their medicines one who suffers; the great seers could not attain their desired life span by means of austerities;

> and the great seers together with the lords of the gods who know all that is to be known could not see, leach, nor perform in full measure.
>
> Furthermore, it is our power of observation that is first and foremost of all that is known, and it is by observing that we perceive the following: over the course of a great many battles, the life span of the thousands of men who fight compared with those who don't is not the same; similarly for those who treat every medical condition that may arise versus those who don't. There is also a discrepancy in the life span of those who imbibe poison and those who do not. Jugs for drinking water and ornamental jugs do not last the same amount of time; consequently, duration of life is based on salutary practices, and from the antithesis there is death. Also, dealing in the appropriate manner with adverse geographic locale, season, and one's own characteristics; dealing with karma and spoiled foods, avoiding over-indulgence, abstinence, or the wrong use of all things, keeping all over-indulgence in check and doing away with lack of restraint, avoiding vagabonds and haste—we perceive that proper regard for these will bring about freedom from disease. On the one hand we observe it and on the other we teach it.

In response to this refutation of physiological determinism, Agnivesa asks Atreya what is meant by the distinction of timely and untimely death if there is no fixed length of life. Atreya answers by comparing the life span of a man and that of an axle. An axle will function properly in a carriage until it wears out, and the health of a man's body remains until his original measure of strength expires in due course and he dies. That is a timely death. Various problems affecting the axle will cause it to wear out prematurely. The load in the wagon may be excessive; poor roads, clumsy drivers or draft animals, poor maintenance and handling, and so forth, all might bring this about, and the same is true for a man's life span.

> He comes to his end as a result of an undertaking not in accord with his Strength, from eating beyond his digestive capacity, or eating bad food, from a deteriorated condition of the body, from excessive sexual intercourse-, from relationships with evil men, from restraining intense urges and from not restraining intense urges that should be restrained, from (he pain brought on by spirits, drugs, wind, and fire; from a beating, and from shunning food and treatment. Such is untimely death. We also observe untimely death among those who are improperly treated for an illness such as fever.

Embryology: Promoting Conception

Recognition of the value of knowledgeable intervention predominates throughout *Car.*, not just with respect to maintaining health and staving off death, but also with detailed directives for promoting fertility and the birth of a healthy, intelligent male child. This is inconsistent with more rigid interpretations of the karma doctrine holding that it is the karma of the fetus remaining from previous lives, not the activities of the parents, that determines the sex and characteristics of the child. Karl Potter discusses Sankara's

formulation, in which karma produces certain residues (*vasana*). It is these karmic residues that condition the kind of birth, life span, and the nature of the experience that the *jiva* will encounter in the next incarnation. This is also the mechanism specified by Patanjali in the *Yoga Sutras*.

In *Car.*, as a practical matter the influence of the parents is more important. There are directions "for the explicit purpose of establishing pregnancy and impeding obstacles to pregnancy." *Car.'s* fourth book deals with "embodiment" (*Sarirastbana*) and is composed of eight chapters. The last of these details clinical applications and is presented as the culmination of the theory discussed in the first seven. Chapter 8 begins with procedures for dealing with infertility and establishing a pregnancy in difficult cases. Preliminary procedures for purification and cleansing with emetics, purgatives, and enemas are suggested. To produce a son the parents are to copulate on even days after the onset of menstruation and for a daughter on odd days, but in either case they should abstain until three days following that onset. The woman is cautioned not to lie prone or on either side lest the phlegm (*Slesman*) obstruct the passage of semen to the womb or the semen and blood be burned by bile *(pitta)*. A woman's overeating, excessive hunger or thirst, fear, disrespect, depression, anger, desire for sexual congress with another man, or ardent passion will render her unable to conceive, or else her offspring will be lacking in qualities. Both the man and the woman should be neither too old nor too young, nor unhealthy, and they should be well suited to each Other. Recitation of charms is suggested, special preparations of rice and barley are to be eaten, a white stallion or bull is to be gazed upon by her, and various other measures and techniques of a ritualistic nature in the character of Dharmasastra are described.

A priest (*rtvij*) may be hired, who selects a spot at the northeast of the dwelling, where he strews cowdung and water about and fixes an altar. For a Brahmin he sits on the skin of a white bull, a tiger or bull for a Ksatriya, an antelope or billy goat for a Vaisya. He places specified articles in their proper place, lights the fire, and prepares the oblation while well-born members of the appropriate *varna* (i.e., Brahmin, etc., as above) are seated all about. The woman and her husband make oblations and propitiate Prajapati and Visnu: "May Visnu cause this womb to be fertilized." She receives water for her general usage from the priest, circumambulates the fire three times, and eats the remains of the sacrificial ghee with her husband, and the two receive the blessing of those attending. Then they cohabit for eight days and will thus conceive the desired son. For a Sudra, however, respectful salutation (*namaskara*) to the authorities is sufficient. For a woman desiring a specific type of son having certain physical and mental features, adjustments in the ritual can be made, and she is instructed regarding the diet, sport, and occupation of the kind of child she desires. If these procedures are followed, conception is certain.

With regard to intellectual endowments, traditional karmic influences inherent in the individual himself are also involved.

Present menial character is a function of the nature of the intellect in all former lives,

the parents' intellect, what is heard at the moment leading to pregnancy, and one's own proper behavior.

Embryology: The Viable Embryo

To understand the elaboration of personality types which result from permutations of the constituents of *sattva* (i.e., menial character), the theory of conception should first be reviewed. It is believed that the *garbha* (the term for embryo and fetus) develops as a result of the successful union of semen (*sukra*) and menstrual blood (*sonita, artava, rakta,* etc.). When blood predominates in the *garbha*, a girl results, with semen, a boy, and when the semen splits, there are twins. Karma is invoked to explain the occurrence of a multiple birth:

> Into as many pans as it shall split,
> the semen-menstrual complex in which there is
> excessive wind (VATA)—
> That many pans is the number of offspring
> that she shall bear, in accordance with their karma,
> not her will.
>
> As a result of karma there is unequal division
> of the semen-blood complex as it develops in the womb;
> One is larger and the second is smaller,
> and so among the twins one is distinctly larger.

Eight abnormalities pertaining to sexual identity, development, and behavior are enumerated, including hermaphroditism, impotence, infertility, ectopic testis, and so forth, and each is attributed to a specific cause, such as abnormal mixture of sperm and blood, complications involving the three *dosas*—thai is, pathogenic bodily elements, wind (*vata*), bile (*pitta*), and phlegm (*kapha*)—or the result of problems with achieving satisfactory coitus, and so forth. At the conclusion of the list, however, karma is also mentioned. "The above eight types of abnormalities are to be regarded as dependent upon karma.

After conception, movements of the woman's left limbs; desire for men; feminine dreams, drinks, foods, character, and movements; feeling the *garbha* on the left side, milk from the left breast, and so forth, indicate that a female fetus will develop, and the opposite indicates a male. The importance of her thoughts at the time of conception in shaping her coming child is also emphasized. It was believed that through the performance of certain *pumsavana* rites the sex of the newly conceived *garbha* could be changed to male. Various combinations of herbs, curds, foods, and insects were employed at the proper time in a prescribed manner. One preparation of rice and flour was to be ingested through the right nostril; she might also drink two handfuls of a mixture of curds, milk, and water

after tossing in miniature gold, silver, or iron figures of men. Other procedures are also described. Measures to insure a healthy pregnancy and precautions to avoid miscarriage were advocated. Certain behaviours and habits of the expectant mother were said to be responsible for specified defects in the offspring.

> Sleeping stretched out on her back might cause the umbilicus to wind around the throat of the fetus; sleeping without a cover and going about in the nude, she gives birth to insane offspring; a shrewish quarrelsome character gives birth to an epileptic; a lustful woman to an ugly and shameless or effeminate son; a woman who is perpetually upset to a fearful, emaciated, or short-lived child; a longing woman to one who causes pain to others, is jealous or effeminate; a thief to a drudge, one who inflicts great injury or who is idle; an impatient woman to one who is fierce, a cheat or a malcontent; a woman who is always asleep to a sleepyhead, a fool or a dyspeptic; a drunk to a big drinker, one who has a short memory or who is mentally disturbed; a woman who eats the meat of the large lizards to one with kidney stones, urinary retention or polyuria; a woman who eats boar meat to one who has red eyes, dyspnea and very shaggy hair; a woman who always eats fish to one who blinks infrequently or whose eyes are fixed; a woman always eating sweets to one with urinary disorder, a mule or one who is very stout; a woman always eating sour foods to one who has blood-bile sickness (*raktapitta*) or disease of skin and eyes; a woman always eating salt to one who soon becomes wrinkled and grey or bald; a woman always eating pungent foods to a son who is weak, deficient in semen or without children; a woman always eating bitter foods to one who is dehydrated, without strength or poorly developed; a woman always taking astringents to one who is dark completed, constipated or sickly—a pregnant woman, being devoted to such practices associated with the ills described above, will often bear a child with a disease causing those symptoms. Furthermore, there are defects in the semen engendered by the father along with defects produced by the mother. These are the conditions which are said to cause defects in the *garbha*.

Thus, the father's semen could also be responsible for defects in the offspring, and according to Cakrapanidatta's commentary, the same indiscretions (*apacara*) prior to conception are implicated. In either case, this wide variety of afflictions results from parental activities with no mention of the child's karma. Although parental behavior during—and possibly prior to pregnancy, for the father—is an important determinant of the condition of the offspring, other components of the *garbha* also play a major role, as we shall see.

At birth, the infant's life expectancy could be ascertained from various signs. These included the quality of hair on the head, qualities of the skin, the relative size of the head; earlobes, eyes, eyebrows, and other facial features; navel, excreta, various anatomical relationships, and so forth. Other features were indicators of subsequent pathology that would develop and were attributed to fate *(daiva)* and thus to karma. These were not necessarily present at birth, but were latent and might appear at any time.

Car. 's analysis of the viable embryo elucidates the relationships between specified components and accounts for a variety of stereotypical character types. As was already noted, the relative proportion of paternal semen and maternal blood determines the sex, multiplicity, and other conditions of the fetus. The *garbha* is made up of the four elements *(prabhava, bhuta)*—namely, wind, fire, earth, and water—and six types of nourishment (*rasa*). These are also constituents of maternal blood, paternal semen, food, and one's own deeds, which in turn contribute the components of the *garbha*. Contributions from karma and the parents thus have a physical basis. The parental contributions to the *garbha* influence its physical and mental nature, while the mental condition is also influenced by karma from his previous incarnations, both through a material transfer of the four elements. For karma, however, this will raise a problem as the theory is developed further in the next chapter. *Car.* 4.3. There, karma is explicitly inherent in *atman*, which is denied a physical basis in the elements; here, karma and *atman* are construed in terms of the four elements. Additional data contribute to an explanation of such discrepancies as the failure in the integration of concepts from diverse sources. *Car.* 4.2 states:

> Due to defects of the seed, the residue of one's
> own karma (*atma-karma-"saya*) and the season,
> as well as the mother's food and activities,
> The various, polluted *dosas* produce malformations
> manifest in complexion and the senses.
>
> Just as excited waters flowing in the streams
> during the rainy season pound with sticks and stones and
> May deform a tree, the *dosas* do the same
> To the *garbha* in the womb.
> That which is borne fleet as thought goes from body to body
> with the four elements and the subtle body;
> A function of the nature of his karma,
> its form is unseen without divine vision.
> It pervades everything and supports all bodies;
> it is all karma and all form;
> It is consciousness, and the constituent element (*dhatu*),
> but beyond the senses; it is forever fixed and imminent;
> it is just that.
> The elements (*bhuta*) (contained in its nourishment,
> the *atman*, mother, and father) are known to number
> sixteen in the body;
> The four come to rest there in the *atman*

and, correspondingly, the *atman* in thou'

They say the elements (*bhuta*) of the mother and father
in the uterine blood and semen are the *garbha;*
The blood and semen are swollen with those elements
and nutrient elements are added.

There are also four elements engendered by his karma
which cling to the *atman* and enter, the *garbha;*
Since the *dharmas* of (he seed are all different,
they each enter into the *atman* of the other body.
Since form is attained from its prior form,
the mind (*manas*) is of the character of its own karma,
Which then splits to form the intellectual-judgmental)
faculty (*buddhi*), wherein there is *rajas* and tams.
Karma is the cause.

Form is never separated from *atman* —
not by the imperceptibles or subtle forms,
Not by karma, the mental faculty nor will,
not by one's sense of identity (*ahamkara*), illness,
nor the dosas.

Since the mind is restricted by *rajas* and *tamas,*
and in the absence of knowledge all the dosas are there,
It is the afflicted mind (*manas*) and the force of *karma*
that is the reputed cause of the activities and growth
of the two (i.e., *rajas* and *tamas*).

There are four components of the viable embryo: contributions from (1) the mother, (2) the father, (3) nutrients *(rasa)* ingested by the pregnant mother, and (4) the *atman* through which karma exerts its critical influence. This schema outlined in the, preceding *sloka* verses is not, however, the last word on the matter.

As was indicated earlier, the surviving redaction of *Car.* is not without textual-critical problems. The text is a mixture of prose and various types of verse, usually *slokas* but also more complex epic meters, and there are notable substantive inconsistencies to support an argument that the text is a conglomeration of strata from several sources. From a medical perspective, the most highly sophisticated passages are frequently in prose, quoting the views of Atreya. Summary *slokas* commonly appear at the end of a discussion, either in the middle of a chapter or at the end, and they may also make up major portions of or even entire chapters, as in *Car*, 4.2. It was suggested earlier that some of these verses may be survivors from earlier medical texts, and the possibility that some are citations from supportive non-medical works should also be considered. This would serve to

explain the inconsistencies and the occasionally tenuous links between some of these passages and the surrounding context.

The prose discussion of *Car.* 4.3, quoting Atreya, elaborates and contradicts the preceding chapter and specifies an additional component in the constitution of the *garbha*, namely, *satmya* (i.e., constitutional integrity). The role of *sattva* becomes complex and more significant, its particular nature (now) dependent upon five components of the *garbha*.

Sperm and blood come together and settle in the womb; the *jiva* descends and, following conjunction with *sattva*, it produces the *garbha*.

This *garbha* is engendered by mother, father, *atman*, *satmya*, and nourishment (*rasa*). There is also the *sattva*, which is self-produced (*aupapaduka*) [i.e., not an externally contributed component like the others].

To this Bharadvaja objects, arguing that the *garbha* cannot be said to be born of these components because no single one of them can itself produce a *garbha*. Atreya explains that this objection misses the point, that it is the combination of the five that is required, and that without any one of them no *garbha* can possibly result. This also offers an opportunity for Atreya to expound upon the nature of the five and *sattva*.

Atreya argues that there can be no conception in the absence of mother, father, atman, and so forth. From the maternal contribution to the *garbha* is derived blood, flesh, fat, umbilicus, heart, lungs, liver, spleen, kidneys, bladder, rectum, stomach, and the other gastrointestinal organs. From the father's contribution comes hair, beard, nails, teeth, bones, blood vessels, sinews, other physiological channels, and semen. With *atman* and the first two an important triad is made that receives additional discussion.

> Every instance of *atman* may not necessarily produce the desired *garbha*, but it certainly will not without the maternal and paternal contributions. Some produce a garbha by their own choice, some by force of karma; sometimes there is power to bring it about, sometimes not. Where *sattva* and the rest arc successfully made, there is sufficient power for producing a fetus as desired. Otherwise there is nut. When there is a failure in generating a *garbha* because of defective means, the *atman* is not the cause. According to those who know the atman, the power of vision, motion, the womb, and release is *atman*. Nothing else can produce pleasure and suffering, and from none but that is the garbha made and does the garbha itself produce. The shoot does not sprout without a seed.

Contributions derived from atman include the fact of arising in a particular womb, life span, self-knowledge, mind (*manas*), the senses, breathing, urges, controls, various features, voice, and complexion, pleasure and pain, desire and hate, consciousness, concentration, intellectual-judgmental faculty (*buddhi*), memory, sense of self (*ahamkara*), and effort.

Satmya, the required balance of all the constitutional components, is also required. From its contribution sickness, lethargy, and greed desist. It provides clarity of the senses,

acquisition of good voice, features, seed, and penile erection.

Proper nourishment (*rasa*) is necessary for the *garbha* as well as for the health of the mother. It provides for the formation and growth of the body, maintenance of life, satiety, thriving, and strength.

That *sattva* plays an important role is clear, though the exact nature of that role is somewhat elusive. As the link between the spiritual and physical, and perhaps also in its role as the starting point for the individuation process producing the various mental evolutes and resulting character types, it resembles the Sankhya concept of *buddhi*. While it carries a connotation of mental efficacy here, it is not the *sattva* of the *guna* triad. Its usage in *Car.* 4.4 as the term for person ality indicates an application broader than the cognitive function associated with *manas*. In *Car.* 4.3, however, a passage on the nature of *sattva* identifies it with *manas:*

> The *sattva* is indeed self-produced (*aupapaduka*). In contact with the *jiva*, *sattva* binds it to the body. Upon confronting death, personality (*sila*) leaves it, trust is toppled, all the senses are afflicted, strength is discharged, diseases abound, and because it is destroyed the life-breath departs. It is the perceiver of the senses and is called manas. We teach that there are three types: pure, impulsive, and lethargic (*suddha*, *rajasa* and *tamasa*). Whatever shall indeed predominate in *manas*, he shall meet that in the next birth. Furthermore, when he has that pure type, he remembers even the previous incarnation, since awareness of memory is connected with the *manas* of that *atman* and follows. Consequently, this man is called "one who remembers past life (*jatismara*)."

The contributions of the *sattva* to the *garbha* include trust, character, purity, hate, memory, foolishness, apostasy, jealousy, heroism, fear, rage, lassitude, perseverence, fierceness, gentleness, seriousness, fickleness, and so forth. These are considered evolutes of *sattva* as it undergoes a differentiation process (te *sattva-vikara yan uttara-kalam sattva-bhedam*). The above traits are not all active at the same time, and the individual at a given point may be characterized by one or another.

As described, these are the five components from external sources (*matrja, Pitrja, atmaja, satmyaja, rasaja*) and the sattva which arises spontaneously in a given birth and departs at death. Atreya again offers the analogy of a man and a can and adds another with a tent, that is, products whose integral function depends upon the proper mutual relationships of their component parts. *Sattva* influences manifestations of the atman in the next birth and in its pure form may admit memory of a past birth, apparently by means of a present interaction of the *sattva* with *atman* capable of detecting the effects on *atman* of the prior incarnate *sattva*—which is equated to *manas* in the above account.

The influence of karma is manifest in the atman and secondarily in the *sattva*, which is derived from *atman*. Aireya refers to this relationship to explain why the mental attributes of children differ from their parents.

The senses are always derived of atman, and destiny (*daiva*) is the cause of their

development or failure to develop. Therefore, the children of senseless ones, and so forth, do not resemble their father.

Embryology: Character

In *Car.* 4.4 there is a detailed account of the development of the *garbha* and the characteristic changes observable in the fetus and the mother in the progressive stages from conception onward through the pregnancy. *Sattva* receives greater emphasis than before as the process of individuation is scrutinized. In the developing *garbha* feelings and desires arise, and their locus is the heart. When the natural throbbing of the fetus is first perceived, it is attributed to desires carried forth from another existence, and in this condition it is said to feel with two hearts (*dvaihrdaya*). The *garbha* heart, a maternally engendered organ, is linked to the mother's heart, and nutrients are transmitted through the connecting channels.

As was discussed, defects in the maternal or paternal contributions to the *garbha* are responsible for defects in the offspring, according to *Car.* 4.8. *Car.* 4.4.32 also includes faults stemming from the nutrients, *satmya*, and *sattva* among these, but defects in *atman* are not allowed. Of the three types of *sattva, rajasa* and *tamasa* are undesirable, while the *suddha* is desirable.

> There are three types of *sattva*, viz. *suddha, rajasa*, and *tamasa*. The *suddha* type is considered faultless and represents the auspicious aspect. The *rajasa* type is faulty and represents the impassioned aspect. The *tamasa* type is also faulty and represents the foolish aspect.

Various personality types are derived from each of these, and they may also be associated with certain body types, which, however, are not described. For the suddha type, categories are named after deities. The Brahma type is pure, truthful, wise, and free of desire, anger, greed, and so forth. The rsi type is devoted to sacrifices, study, vows, and similar concerns. The Indra type is powerful, acquisitive, heroic, virile, and concerned with his own righteousness, possessions and pleasures. The Yama type follows what is prescribed, does what is proper, does not fight, and has a good memory, and so forth, The Varuna type is resolute, clean, intolerant of filth, fastidious in the performance of sacrifices, and is in control of his anger and tranquillity. The Kubera type commands honor, attendants, and pleasures; he is emotional and enjoys his leisure. The Gandharva type is fond of laughter, dancing, music, and stories, and is well versed in Itihasa and Purana. He also likes garlands, women, leisure activities, and is contented. Although all seven of these are considered *suddha-sattva* types, a hierarchy is indicated, with the Brahma type at the top.

The claim of being able to remember previous lives (made for the *jatismara*, who is defined by his *suddha-sattva*) seems consistent theoretically for the Brahmin type only, since the others are for the most pan reasonably normal, and the empirical strain on a theory holding that such an extraordinary capability was widespread would have been

intolerable. It is more probable that *Car.* 4.3.13 and 4.4.37 represent different theoretical formulations culled from different sources, the former passage from a more grandiose scheme. The interchange there of *manas* and *sattva* may be a remnant of such a philosophically rather than medically oriented context.

There are six *rajasa* types, each manifesting some degree of antisocial and otherwise undesirable behavior. The Asura type is fierce, misanthropic, lordly, deceitful, and given to rage; he is without compassion and self-serving. The Raksasa type is intolerant and always enraged; he is faultfinding, cruel, fond of meat, gluttonous, jealous and lazy. The Pisaca type is gluttonous, effeminate, and likes to be alone with women; he is filthy, cowardly, a bully, and given to bad habits and diet. The Sarpa (snake) type is powerful when angry and otherwise cowardly; he is often lazy; he frightens others in the area and considers his own food and sport above all else. The Preta type likes food, has a morbid personality, is jealous and selfish. The Sakuna type is forever preoccupied with pleasure. For him food and sport come first; he is unstable and impatient, living from moment to moment.

The three *tamasa* categories represent the fatuous aspect of *sattva*. They are the Pasu (*animal*), Matsya (fish), and Vanaspati (tree) types. The Pasu type is obstructive and stupid; his diet and behavior are despicable. He is a somnolent character for whom sexual intercourse is foremost. The Matsya type is cowardly and dull, and he covets food. He is fond of water, unstable, satisfied one moment and angry the next. The Vanaspati type is idle, solitary, intent on food, and bereft of all menial faculties.

Etiology of Disease

Car. divides all disease into two categories; *nija* (endogenous), always attributable to an imbalance of the three *dosas*, and *agantu* (exogenous), caused by demons, poison, wind, fire, and battle injuries. The *agantu* conditions, however, reduce to *prajna-'paradha* (culpable insight, i.e., violations of good sense). All of the undesirable mental states (*mano-vikara*) including jealousy, depression, fear, anger, vanity, and hate are caused by it. *Nija* disorders are treated by restoring the proper physiological balance, and *agantu* disorders by giving up *prajna-'paradha*, calming the senses, recognizing implications of geography, season, and one's own nature, and behaving in a manner consistent with them.

While *Car.* admits karma as a causative factor in the etiology of disease, it tends to be included in verses of a general, theoretical nature rather than in passages with more direct clinical applicability.

Loss of concentration, resolve, and memory,
    reaching the time when karma is manifest,
And the arrival of that which is unhealthy—
    know these to be causes of suffering.

And
For there is no significant karma whatsoever
whose fruit is not consumed.
Diseases produced by karma resist treatment
until that fruit is gone; then they subside.

Karma serves a dual function. Not only does it provide an explanation for those diseases that do not fit the recognizable *dosa* patterns, but even those disorders that do fit the patterns are, when resistant to treatment, reclassifiable as *karmaja*, since that resistance is itself pathognomonic. The medical system thus copes with the characteristically Indian drive for completeness in formulating theoretical foundations and thereby justifies an essential premise (i.e., *dosa* theory) which can survive intact despite instances of its admitted ineffectiveness in healing certain patients. Notwithstanding this success of Ayurveda in assimilating a karma doctrine, from an etic perspective it manifests an abandoning of empirical medical methodology in the fac^ of insurmountable illness. The system then compensates by incorporating whatever philosophical and spiritual modes of solace are available from the culture at large in order to cope with its failure. Consider the analogous situation of the present day. Although Christian Science and Western medicine are doubtlessly incompatible, physicians may none the less refer to the Will of God with impunity upon reaching the periphery of their clinical competence, and hospital architecture commonly includes a chapel, thus manifesting similar deference to the dominant cultural values.

Car. has in effect redefined the concept of karma, shifting the emphasis from past lives to present behavior in such a way as to make it clinically germane. In doing this with the concept of *prajna-'paradha*, *Car.* adds force to its own advocacy of a salutary life style. One finds a greater willingness on the part of *Car.* to venture farther from the doctrinal escape hatch—karma—than those later texts in which medical and speculative notions became more highly intertwined in their clinical application. After refuting the proposal that the life span of every individual is predetermined, the logical inference from a more fundamentalist interpretation of the karma doctrine, Atreya affirms:

In this age the life span is one hundred years; perfecting one's own constitution and merits and attending 10 good health brings this about.

Although *Car's* shift from the etiologic perspective dependent upon karma and spirit-possession is especially significant because the trend was moving toward a less rather than a more secular approach to medicine, in some cases the shift from karma and demonic possession to *prajna-'paradha* is incomplete or altogether lacking. Childhood diseases have a sudden onset, produce high fever, and quickly abate. They were considered independent of the *dosa* theory and "brought on by the anger of the gods and the rest," that is, classes of demons *(bhuta)*. The exogenous menial disorders were conceived in similar terms, but here we discern a distinction between more and less sophisticated formulations of the medical theory. *Car.* 6.9.16, quoted earlier, appeals to karma and

demons 10 explain one form of insanity, *agantu-unmada*. In the Nidana section ("Pathology") this view is distinguished from and then rationalized with that of Atreya:

> Some seek its [*agantu-unmada*] cause in the effect of unpraiseworthy karma committed in a previous life, but according to the great Atreya Punarvasu, *prajna-'paradha* is really the cause. For it is because of this *prajna-'paradha* that one is contemptuous toward the Devas, Rsis, Pitrs Gandharvas, Yaksas, Raksasas, Pisacas, Gurus, old people, Siddhas, Acaryas, and those worthy of honor, and thereby behaves improperly; or else he undertakes some equally unpraiseworthy activity. Once he is stricken by himself, the assaulting gods and the rest render him insane *(unmatta)*.

The point may be obscured in other passages of *Car.*, but it is significant that the locus of etiologic cause had clearly shifted from outside the individual, as in the demonic accounts represented in the earlier *Atharva Veda*, to a personalized account in early Ayurveda— despite the fact that this view seems to have lost ground in the later Ayurvedic texts. Summary *slokas* at the end of *Car.* 2.7 make it clear that it was not the demons, but the individual who was the source of his illness:

> Neither Devas nor Gandharvas nor Pisacas
> nor Raksasas
> Nor the others afflict the man who is
> not self-afflicted.
> Regarding those who turn on him
> who is afflicted by his own karma,
> His distress is not caused by them,
> since they did not bring on his apostasy.
>
> In the case of disease born of his own karma,
> the result of *prajna-'paradha*,
> The wise man does not blame the Devas,
> Pitrs, or Raksasas.
> He should regard only himself as the cause
> of his happiness and misery;
> Therefore, he should keep to a salutary path
> and not falter.
>
> Honoring the Devas and the rest
> and devoting himself to what is wholesome—
> Whether doing these or their opposite,
> it shall all reach him in the atmon.

These slokas emphasize the weight given in early Ayurveda to the shift from external

to internal etiology. Demonic possession was redefined so that the problem here is not to appease the demon (cf. Atharva Veda 6.111) but to put one's own life in order. *Car's* shift in emphasis from karma to prajna-'paradha similarly serves to define the root of the problem in terms of behavior pertinent to the present situation instead of previous incarnations, which the individual is actually no more able to affect in a medical context than he can a fickle demon. Unlike *Car.* (and *Bhela Samhita*), *Su.* and *AHr.* each contain one or more separate chapters on demons (*bhuta-vidya*) which more clearly accept the position that it is the demon rather than the individual who causes these maladies. Compare, for example, the above verses with the following admonition from Su. 6.60.55 which is also repeated in AHr. 6 5.49:

> One should not move against the affliction of the
>   Pisaca in other than the proper manner;
> They are resolute, angry, very powerful, and may
>   launch an attack against the physician and patient.

These texts also lack a concept of *prajna-'paradha* and tend to see karma in more traditional rather than medical terms.

The term *aparadha* is used in *AHr.* without *prajna*, thereby stripping the concept of its technical usage and transforming it into the violation of a more traditional moral imperative. Vagbhata, author of AHr. (approximately A.D. 600), posits three categories of disease, resulting (1) from the *dosas*, (2) from karma, and (3) from a mixture of the first two. The dosa disorders are associated with actions in this life and the karma disorders with a previous life.

> Some arise from transgressions which are experienced,
>   some from prior culpability *(aparadha);*
> From a mixture of these there is another,
>   and thus disease is known to be three-fold.
> Arising from the *dosas* it has the corresponding
>   pathology; arising from karma it is
>   without basis [in the present life];
> A malady with an intense onset when there is
>   slight cause is the result of dosas and karma.
> The first desists after treatment counteracting [the dosas],
>   the karma type after dissipating karma,

And the disease arising from both desists
after the eradication of the dosas and karma.

Thus, any malady is cured when the influences of both the *dosas* and karma are dissipated.

The zenith in the rising impact on Ayurveda of more traditional ideas about karma is best represented in an obscure monograph surviving from the later middle ages. Though unrepresentative in the extreme to which its position is taken, and so interesting for the same reason, *Jnanabhaskara* consists of a dialogue between Surya and his charioteer on the evils of human existence and a host of diseases—all attributed to karma. Descriptions of pathology are extensive, but therapeutics are confined to expiatory procedures. Within the scope of that presentation, however, traditional Ayurvedic topics are included, such as *vata*, *pitta*, and *kapha* disorders. It was, however, long before this point that Ayurveda had begun to allow its garden of empirically derived clinical insights tc be invaded by weeds spreading from the more supernaturally oriented popular culture.

Epidemic

In his analysis of karma in the *Mahabharata*, J. Bruce Long notes that during limes of misfortune and mental anguish the karma doctrine served as a source of meaning, encouragement, and consolation. *Car's* chapter on catastrophic epidemics (*Car.* 3.3: *janapado-'ddvamsana*) addresses itself to situations in which one might therefore expect the role of karma to be significant. In such times normal medical practices and expectations are frustrated by indiscriminate and high rates of morbidity. The etiologic explanation consequently shifted from the *nija* category, which could not account for these events, to the *agantu* category. Atreya observed that even though a diverse population may be stricken by an epidemic, there are several common denominators, namely, season, landscape, water and wind. Aberrations in any of these, such as windstorms, putrid water, changes in the wildlife or complexion of the landscape, and unseasonable weather, might produce epidemic illness.

Specific cases were said to respond well to treatment, herbal remedies being especially useful, and an intelligent physician was well advised to gather the appropriate medicinal provisions while he could upon observing the natural signs of impending disaster. Cases that did not respond to treatment and ended in fatality were attributed to karma. "Most do not die, most are not of that karma" Cakra-panidatt's commentary on this passage explains that only some karma will produce deadly illness when it matures, such as burning a village or murder. He surmises that because such events were rare, so were the fatalities. According to this view, although such fatalities are attributed to karma, it is not necessarily the karma of the victim, but potentially somebody else in the region that is ultimately responsible. Atreya makes no such speculation, and the nature of his discussion argues against it. He seems to allow, however, for the effects of a group's karma, which may be implied by his use of *adharma*.

In answering a question put to him by Agnivesa, Atreya responds:

The cause of them all, Agnivesa, the misfortune that arises from the winds and the rest, is *adharma* (unrighteousness) or else previously committed bad karma (*asat-karma*). It is nothing but *prajna-' paradha* that nurtures them both.

He cites the widespread *adharma* accruing from corrupt leaders and spiraling down the social order. Then the deities forsake the community; the seasons, winds, and waters are disturbed, and the population devastated. *Adharma* is the cause of war, and either *adharma* or some other transgressions cause the Raksasas and the other demonic -hordes to strike. The curses of gurus, elders, accomplished ones, and others are also caused by improper behavior rooted in *adharma*." *Prajna-'paradha* is the source of both *adharma* and *asat-karman*, which lead to catastrophy. Adharma may be either mediated or manifest by improper actions, and may simply refer to *asat-karman* en masse.

The following, drawn from *Car.* 4.1, elucidates the nature of prajna- 'paradha.

Prajna-'paradha is considered to refer to that deed which, lacking in concentration, resolve and memory, causes harm. It provokes all the *dosas*.

Among these "violations of good sense" are the following:
forcing and suppressing the natural excretory urge
reckless behavior and too much attention to women
doing something either too late or something that should not be done (*mithya-karman*)

violating social custom and insulting venerable men indulging in what one knows to be unhealthy, in psychotropic drugs, and what is contrary to one's beliefs roaming about at improper times and in improper places friendship with those who wreak havoc ignoring what one's senses tell him and valid experience jealousy, vanity, fear, anger, greed, fatuation, intoxication, and confusion or a blameworthy deed (*karman*) derived from these a blameworthy bodily activity or any other such deed (*karman*) produced by passion or fatuation—

The learned call these *prajna-'paradha*, and they are the cause of disease. These are defective discriminations of the judgmental faculty *(buddhi)*, and they bring on distress. They are known as *prajna-' paradha* because they are in the held relating to mind (*manas*)."

This formulation of *prajna-'paradha*, unique in Ayurveda, faciliated Atreya's unparalleled emphasis on clinical empiricism over dogmatism and his subordination of supernatural etiology. While village burning and a murder committed in a prior life readily came to mind for Cakrapanidatta in the eleventh century as he sought to understand the significance of the term *karman* in *Car.* 3.3.13, they in fact belie Atreya's predilection for addressing more mundane activities in the world of the present over obtuse speculation on karma rooted in, the distant past.

D

Dāna (charity)

At the outset it must be recognised (though we need not attach over-great importance to the fact) that *dhana*, "asset", included *dharma*, "spiritual or transcendental merit", and that this peculiarly Indian entity could be hypothecated or exchanged or sold or gifted away. The expression *tapo-dhana*, as a description of an ascetic is evidence of this notion. (See also Nārada, the deceased indebted ascetic's (etc.) merit becomes his creditor's *dhana*.The concept, not altogether unlike the concept "self-respect", was sufficiently concrete and real in the eyes of some classes that it was as valuable to them as any wealth.

Unlike western systems which speak of *res*, Hindu law speaks of *dhana*, "a *res* having a value", in connexion with Property. Other words implying "wealth", "estate", "substance", "means", existed from Vedic times, such as *sampatti, vittam, vasu, vibhava, ṛktham, rā,* magha. The frequency of these in the Ṛg-veda, for example, can be observed in the Poona edn., vol. 5 (indices, 1951). *Vaṣu* was obviously very much nearer to the classical sense of *dhana* than *dhanam*, which occurs less frequently. ṛktham already has the sense of patternal wealth: cf. ṛg. III, 31, 2. *svam* appears, but the parallel from in classical Skt., *ātmiyam*, "own" does not appear. Contrasted with *dravya*, which means *res*, without implications of value, *dhana* exactly equals "property" in English (with a small p). Conveniently, as we shall see (VI iii), it is in logic the thing in which certain other categories, such as *svatva* itself, "occur" or inhere). It is a substratum, or material vehicle, for the Property of someone, though it can exist without that "occurrence" or inherence. In classical Sankrit *dhana* is often used to cover all types of property, as in *stri-dhana*. On this institution. It is evident from its title that property of women was of relatively recent growth in Āryan practice, and that females' right to own different types of property, classified by source and justification, was established gradually. Sen-Gupta agrees, which may be immovable;but it is correct to contrast *dhana* with *sthavara*, "immoveable property', and *dvipada*, "slaves"). Nowadays the word *dhan* implies, more often than not, "money". However, the general sense is required for the purposes of this study.

Dhana includes *income*, and "incorporeal rights" of the wide range of types which

existed in mediaeval India and to some extent still exist. For *nibandha* see below (IVC viii [e]). It is important to see that to a Hindu a debt, or what in English law is called a "chose in action", is just as much an asset, *dhana,* as a thing in possession; consequently a creditor is called (*inter alia*) *dhanika*). Monopolies, rights to perform ceremonies, rights to manage the property of *devas* (*shebaiti* in modern usage) and various other sources of income, such as the right to take fees from pilgrims requiring spiritual guidance at a place of pilgrimage), all alike are *dhana*. Whether they are partible *dhana* is another question, but they often are).

Discriminatory rules prevented the acquisition of property (or of a particular *adhikara)* by "disqualified" persons, who were on moral or physical grounds, insanity, etc., prohibited from taking a share at partition and from inheriting). Rules giving a right of preemption (IVC vi) discriminated against persons not allowed to preempt, or in an inferior position relative to the preemptor. Prestigeless persons were prohibited from acquiring some property in sales), and we can be sure that rules of caste discipline, recognised by the state, would effectively prevent a Śūdra, however rich, from buying a house in a Brahman street, or an artisan settling in a village where there were already sufficient artisans of that trade and a custom limited competitive immigration.

An early lexicographical list of means by which one may become Owner in not exhaustive). Two well-known lists by jurists indicate the climate of opinion when the nature of acquisition was first discussed. Gautama says):

An Owner occurs in cases of inheritance, purchase, partition, garnering and finding. For the Brahman acquisition is an additional mode; for the Kṣatriya conquest; for the Vaiśya and the Sūdra wages. For the Vaiśya additional modes are agriculture, trading, tending cattle, and moneylending.

Manu says

Seven acquisitions of wealth are consistent with *dharma: dāya*[advancement parentally, acquisition of joint family property by membership, or inheritance], presents, purchase, conquest, lending at interest, employment in labour, and acceptance from a virtuous person.

Further he says

Learning, arts and crafts, employment for wages, service, tending cattle, business, agriculture, "constancy", alms, and usury, are the ten means of subsistence. Whatever the original meaning of the stanzas, in the views of the commentators certain castes were allowed to earn in certain ways, while the ten were available to all promiscuously in *āpad*, i.e. emergency conditions. A comprehensive regulation of *svatvahetu* or *agama* (see Mit. on Yājn. II, 27) must take into account the presence or absence of *āpad* (which should be of a general and not merely personal character, cf. Mit. on Yājn. II, 114, prooem., where admittedly the context is that of the family). The subject of *āpad-dharma* is vast, a sect. of the Śāntip. of the MBh. being devoted to it. In our connexion see K. ii, 118 f., 129—30. A somewhat late *smṛti* cited in Madhava on Paraśara (Jha, *HLS*, i, 249) gives as *dharmya*

means of acquisition *dāna, kraya, śaurya* ("valour", i.e. booty), *audhvahika* (dowry or wedding presents), *dāya*. This evidently is nearer to the Patāñjali-type of list (see n. 63), and has nothing to do with our present classification: the rare citation of the text is understandable. The belief that acquisition acc. to *varṇaśrama-dharma* is essential to good lives in a caste-ridden community is still alive: see remarks of H. H. Sri Sankaracharya, Feb. 17, 1958 ("Hindu", Feb. 23, 1958, p. 10): "Finding" applies to lost property and tresuretrove, subject to the king's rights (IV Av). "Acquisition" meant fees for sacrificing and teaching (where allowable) and acceptance of gifts for *dharma*. In times of distress *(apadi)* Manu himself tells us, lending at low rates of interest was allowable even to Brahmans and Kṣatriyas).

The absence of exchange from the lists, perhaps explicable by reason of the ubiquity of purchase, is atoned for by the late *smṛti* authority Bharadvaja). Bṛhaspati similarly adds common means of acquisition, mortgage (foreclosed), booty, and dowry). Mortgage would come under the "conditional transfer" which medieval commentators add, saying that by the operation of *saṅkalpa*, "intention", a person may become Owner. Our logicians approach the matter from a different angle. When they list the instances of *svikāra* (as *Sv. Rah.* ch. VI: acceptance, finding, purchase, exchange; Jagannātha, following Vācaspatibhaṭṭācārya, I. O. 1768 fo. 4 b, trans. p. 187, *arjanam* the only cause, and that *Kayika* (physical), *vācika* (verbal), or *mānasa* (mental)) they are agreed, whatever their scheme, that *sinkalpa* is only a stage in the destruction of the *svatva* of the *pārvādhikāri* (prior owner), and cannot in itself be a cause of the *svatva* of the *uttarādhikari* (successor in title). Gautama is alleged to have laid down that *utpatti*, "birth", without further qualification, was a means of becoming Owner): this led to endless discussions, since it cut across *dāya* and *ṛktha*. On the implications of this dubious rule see below (IV C ii).

The Owner of land (in this case the occupier, tenant from the crown of the occupancy-right acquired the materials of any building left on his land by a trespasser).

Acquisition of *adhikāra* from one who had no *adhikāra* himself created, as everywhere else, difficulties. The fundamental right of recovery of stolen property from the purchaser, etc., if the latter could not produce the vendor), is partly lost where the sale is openly in the market and the vendor cannot practicably be traced). It seems it was formerly totally lost where the sale was openly in the market in the presence of disinterested witnesses), but here, as in the case of acquisition by adverse possession (IV B ii), commentators attempted to dilute the rules in the interest of what they thought was justice).

Means whereby one ceases to be dhanādhikāri

No list corresponding to those of Gautama or Manu exists, though the author of the Svatva-vicāra gives the following): death, embracing an order of ascetics *(sannyasa)*, "fall", destruction of the object, relinquishment *(tyāga)*, sale, lapse of time. The Svatva-rahasya, insisting that sale is a form of relinquishment, spends effort in refuting Vācaspati-miśra's seven-fold categorisation of relinquishment). While the causes of Property are called *svatva-janakas*, "P-begetters", the opposites are called *svatva-dhvaṃsakas*, "P-destroyers". Making our own list we find the following means of destruction of *adhikara*: death, *sannyāsa*, and the controversial heading "fall" (*pātitya*), which form one group; fine,

confiscation, gift, mortgage, sale and exchange (which may form another); renunciation and distribution or sharing (a highly controversial head), which may form a third; and sacrifice, oblation, and "release" (*utsarga*), which form the last group. "Lapse of time" may well have been a cause of loss of adhikāra in the two contexts of *naṣṭa* or *pranaṣṭa* (sometimes also in practice *nikṣepa*), "lost property" (IV A v), and adverse possession. The latter was open to question during the golden period of commentatorial literature, since the jurists were intent upon construing all instances of adverse possession as actual or constructive *upekṣā* ("abandonment", "renunciation", a sub-class of *tyāga*) on the part of the former owner. For this subject see below (IV B ii). Classical sub-divisions of *tyāga* are into *yāga*, "sacrifice"; *homa*, "oblation in fire"; *dāna*, "gift" (normally the *śāstric* gift for purposes of religious merit, while gift generally is termed *laukika-dāna*, "popular gift"); *vikraya*, "sale"; *vinimaya*, "exchange", and *upekṣa*. *Utsarga*, "release", occurring in the two main contexts of *vṛṣotsarga*, "bull-release"), and *taḍāgotsarga*, etc., "release of tanks, ponds, etc.", comes within *yāga* and in part within *dāna*; there is however no moment when the entire *adhikāra* of the Owner is extinguished—a situation which requires further discussion (IV C x).

The whole question of how Property ceases will be considered further in a later section. The loss of *adhikāra* upon *sannyāsa* and *pātitya*, however, deserves preliminary explanation at this stage. The first presents few problems. Upon becoming a *sannyāsi* (an event invariably attended with ceremonies expressive of the civil death of the man thus renouncing the world) all *adhikāra* ceased: no further sacrifices could be offered, the relationship with the wife ceased, and property passed as on a natural death to the heirs or *dāyādas* (IV C ii). Naturally the capacity to own did not entirely lapse. The remnants of clothing, books, water-pot, and so on, and food received from charitable donors must have been within the *sannyāsi's* ownership, and the texts admit this necessary anomaly). If any considerable property was accumulated, and our texts) forbid more than essential accumulations (but were not obeyed in prectice), then on eventual death it passed to spiritual relations and not blood relations unless these also were spriritually related (which was unusual). In modern times the profession of *sannyāsa*, which was the prototype of the Buddhist monk's status, has proved profitable to many, and the British Indian courts have merely followed public usage in not disallowing the *sannyāsi*, or *vairāgi*, from owning property). That females could become *vairāgiṇis*, and so be divested of property on renouncing the world, was admitted in the early British period and seems to have been consistent with usage; it is now rarely found).

Pātitya, "fall", or the state of being a patita, "one who has fallen", a state reached immediately upon committing a *pātaka*), "cause of fall, sin", seems originally to have involved automatic loss of Property, though it did not terminate the relationship between husband and wife. The original notion appears to have been that society withdrew its protection pending the performance of *prāyaścitta*, "penance"; though this notion seems not to have been explicitly stated in our surviving texts. Upon failure or refusal to perform *prāyaścitta* the offender was excommunicated (*bahiṣkṛta*), whereupon all rights of functional earning and common enjoyment in Hindu society ceased. When *bahiṣkṛta* the *patita* was

civilly dead, though he could resume civil rights upon reinstatement after penance. Whether he could thereupon reenter property he had vacated by his *pātitya* remained open to question). As the centuries advanced *prāyaścittas* more and more frequently took the form of caste feasts or commutations therefor, which were indistinguishable from fines. If the *patita* had no Property it was impossible for him to pay. Jurists who retained the ancient notion supposed that he must earn sufficient for his *prāyaścitta* by begging). Others, and their view predominates, redefined *patitya* in this context as "settled intention not to perform *prayaścitta*"). The usefulness of the original doctrine is apparent when we consider the vast amounts of property which were under the control of, or actually owned by, persons whose orthodoxy (from the point of view of the relevant sect or society) was essential to their carrying out the functions, for the maintenance of which the property was originally transferred or dedicated. Misbehaviour would cause the *adhikāra* to lapse *ipso facto*, and the question whether the offender should be reinstated would not be complicated by the pressures which he could bring to bear as the result of possession of wealth.

Adhikāra could cease by an additional mode, which the Sanskrit jurists perhaps intend to be covered by *upekṣā*, but which deserves special mention. The *dharmaśāstra* requires that persons in certain situations should "pay" a debt, or divest themselves of property, by abandoning it ritually, as for example by throwing it into water). The intention is merely to put an end to one's own *adhikāra* without *uddeśa*, that is to say without designation of a transferee or beneficiary).

Dhana without an adhikari, and ultimate dhanādhikāritva

These is a difference between *anadhikarika-dhana*, or property in repect of which no one has an *adhikāra*, and *asvāmika-dhana*, or unowned property, though the words do not reveal the difference, and the difference does not seem to have been pointed out by Sanskrit jurists. *Asvāmika-dhana* deserves special treatment: in religion as well as law it played important roles (IV C i). The river-bank was, and remained, *asvamika*; birds and fish if wild or taken in a river or public tank were *asvāmika* until taken). *Anādhikārika-dhana* is not necessarily *asvamika*. The notable instances are all examples of a potential right (which cannot be classed as an *adhikara*, whereas it may well be *svatva*), the best being the rights of the king in respect of *nidhi* and *naṣṭa*. Even before the law commenced to define the respective rights of claimant, finder, and king in such properties, the king was potentially entitled to his proportion. *Nidhi* belonged potentially to the king as to 5/6ths and to the finder as to the remainder, unless he happened to be a learned Brahman in which case he retained the whole). *Naṣṭa*, after a stipulated period of time, passed partly to the king and partly to the finder). These *adhikāras* in respect of *anādhikārika-dhana*, materialising only after the property had been found and duly reported, were valuable and could be assigned, like fines and land revenue).

The king's ultimate rights over "unowned" property were pervasive, though commonly assigned. Unappropriated land, resumable tensures, and heirless inheritances *(dāya)*, the

last far more profitable than the terms of the *dharmaśāstra* would suggest), were part of the king's alienable *svatvas*.

It is very difficult to say whether the following are true examples of *anādhikārika-dhana:* property abandoned in the following circumstances, namely penance, performance of a vow, "payment" of a debt (IV A iv), *ātma-śraddha* ("śrāddha for one's self"), or offerings to birds and animals.

The king's rights in respect of mines and minerals come in a distinct category. Because of his "lordship" of the soil (V i) he was considered entitled to a proportion of the product of all mines).

DHARMAJA—DIVYA (The ordeal of Dharma and Adharma)

Dharmaja is the last ordeal discussed in the Dh. works. It has been a to the list of the recognized ordeals by Br. and Pit. taking thus the total numb the recognized ordeals to nine.

Br. and Pit. call this ordeal as Dharmaja, so do the digest writers commentator vijna neśvara calls it as the ordeal of Dharma and Adha Dharmaja is obviously based on the principle of lots. Similar method found in other civilizations also.

We have already seen that Dharma is the principal deity of the order. It is possible that this Dharma is still personified and developed in form method by counter-balancing it with Adharma. Images of Dharma and Adh are prepared. The person is asked to take any one of them, judging by which of the two—the Dharma and Adharma—shall be on his side.

According to Pit. the Dharmaja ordeal is tried in the cases of killer persons claiming money and the persons undergoing expiation. Mit. then pints out that the ordeal is used under criminal charges, civil charges an charges regarding the sins. According to SC, however, the Dharmaja is apable for minor charges of violence, monetary claims and sins. Considered the cost point of view it is an inferior ordeal, coming last but one in the live.

The Dh. writers have not mentioned any special rules regarding the and place of this ordeal.

PROCEDURE

BṚHASPATI

The Dharma and Adharma must be drawn on two leaves, the former being in white and the latter in dark, and should be invoked by the mantras like Jivadāna etc. and Sāmans like Gāyatri etc. (Having invoked Dharma and Adharma), the two should then be worshipped by sandal wood paste and white and dark flowers and be sprinkled by Pañcagavya (five products of cow). The two should then be enveloped in two equal earthen balls and be placed in a new earthen pot, without getting them identified. The accused person should

then swiftly take one of the balls from the pot. If he holds the Dharma he is pure and innocent and should be felicitated by the persons conducting the trial. If he holds the Adharma, he should be punished and must be expelled from the country.

PITĀMAHA

I will now tell the ordeal of Dharma and Adharma for the king who can use it for the killers, the persons claiming money as well as those who are desirous of expiation. The Dharma must be made of silver and the Adharma of iron and lead. The Dharma and Adharma could also be drawn in white and dark respectively on Bhūrja leaves or the pieces of cloth. They should be sprinkled by Pañcagavya and be worshipped by offering sandal-wood paste and garlands. The Dharma must have white flowers and the Adharma, the dark. Having enveloped them in this way, they should be put in two balls. The balls should be covered by mud or cow-dung on all sides and must be placed in an unbroken earthen pot without getting them identified. (Let the pot be placed on a clean besmeared ground near gods and brahmins).

(The Prādvivāka) should then invoke the gods and the Lokapālas (the guardians of the worlds) as said before (i.e. in the procedure common to all ordeals) after having invoked Dharma before that. The letter declaring the purpose of the trial should then be written. The accused person should then address with following mantra: 'If I am innocent (Lit. free from sins) let Dharma come to my hand, if I am impure let sin come to my hand according to (this rule of) Dharma. The accused person should then swiftly take out one of the two (balls). If he takes the Dharma, he is pure. If he takes Adharma, he loses the case. This is in short, the ordeal of Dharma and Adharma.

The procedure of the ordeal can be divided into following stages. (i) General procedure. (ii) Establishing the images of Dharma and Adharma, and placing them in respective balls and then in the earthen pot. (iii) The trial. (iv) Signs of success or failure of the trial.

(i) General rites—

As in cases of other ordeals, here also, Prādvivāka should perform all the general rites such as invocation of Dharma etc.

(ii) *Establishing the images of Dharma and Adharma—*

The images of Dharma and Adharma may be drawn on the pieces of cloth or may be prepared from silver, iron or lead (or iron and lead mixed) respectively. The images must be consecrated by the Jivadāna Mantra and Gāyatri Sama.

Vyavahārakalpataru points out that the Jivadāna mantra to be recited is Mā praga mapatho vayam' etc.

DT and VM point out that the images must be consecrated and duly established by the

Prāṇapratiṣṭhā mantras described by Sāradātilaka. The procedure of Prāṇapratiṣṭhā consists of consecrating the image with the mantra 'Aṁ, Hrīṁ, Kroṁ, Haṁ, Yaṁ, Raṁ, Laṁ, Saṁ, Sam Haṁ, Saḥ Sohaṁ', and then establishing Prāṇa, Jiva and all Indriyas (such as Vak, Manas, Tvak, Cakṣu, etc.) in the image with the same mantra and performing various samskaras.

If one is not able to recite the Gāyatri sāma, one should recite Gāyatri with the Praṇava (Om) and the Vyāhṛtis (i.e. Bhūh, Bhuvaḥ, Svaḥ).

(iii) Trial—

The accused person should lift any of the balls containing Dharma and Adharma.

It will appear that pit. recommends more covering for the images so that they would not be identified easily.

(iv) Signs of the success or failure of the trial—

If the person lifts the ball containing Dharma, he is successful. He should be felicitated. If he takes Adharma, he is unsuccessful. He should be punished and expelled from the State.

This ordeal appears in Maratha period in form of 'Gorā Caṇā, kālā Caṇa' (ordeal of white and black gram—Vide Ch. VII).

DHATA–DIVYA (Ordeal by Balance)

Dhata or Tulā is an important ordeal in the Dh. system. It is mainly developed as a model ordeal and is placed first in the list. All general rules regarding the procedure of an ordeal are, therefore, explained with reference to the Balance ordeal. This oredeal has a very simple form. It does not involve any risk. Probably from this point of view only, the Dh. writers must have considered this ordeal worth developing as a model and an all-purpose ordeal.

The Dhaṭa or the Balance is a typically Indian ordeal which symbolizes the very concept of a judicial goal i.e. weighing the truth against falsehood. It is in fitness of things, therefore, that the Indian jurists develop it as a model ordeal.

The Śatapatha-Br. speaks of the balance in connection with the weighing of man's good and evil deeds in the next and in this world. Though this differs very considerably from the balance ordeal discussed in the Dh. works, its influence in the development of the ordeal cannot be ruled out.

The Balance ordeal emerges with the significant development of the Indian law. This can be explained as follows:—If we study the evolution of the Indian law, we find that the period after the sūtras and before the formation of the smṛtis, forms an important stage by

itself. Eventhough, the law was sufficiently developed in the sūtra age, this was the period when various concepts of the positive law (Vyavahāra) were becoming clear. It was also an important period for the development of the law of evidence. In this period various human proofs evolved and developed. In this period only, we find that the ordeals are regularly put under evidence, side by side with the human proofs, and are treated as a regular means of proof. It was a stage when the idea of weighing of proof and deciding its relative strength was getting clear. It is this idea of weighing which must have also given rise to the idea of weighing a person in a balance for the truth. The Dhaṭa or the balance ordeal thus symbolized the idea of weighing which was dominantly developing, particularly in the law of evidence. The developments are found crystallized in the laws of Viṣṇu and Yāj. It is to be noted that Viṣṇu and Yāj. are the first writers to discuss the set of five ordeals with Balance as the first and the model of all the ordeals.

Referring to the Dhaṭa ordeal, Dr. N. C. Senagupta observes—'from this description one is reminded at once of the famous writing on the wall of Belshazza's dream, 'you have been weighed in balance and found wanting', that probably indicates a custom in Babylon of weighing accused persons not dissimilar to the ordeal by balance as described by Kāt. It may be that this practice was borrowed by one community from another, or it may be, it was an institution common to all races inhabitating from India to Palastine. No one knows'.

It is not possible to say anything definite whether the Balance ordeal was known or practised by the other people also, but the Dhaṭa-divya discussed in the smṛtis appears to be typically Indian. A.E. Crawley who has written on the world ordeal has described the 'Indian Balance Ordeal' as a curious ordeal.

The ordeal by Balance has two names (i) Dhaṭa and (ii) Tulā. In fact, Tulā is the beam of balance and Dhaṭa is the cord connected with the centre of the balance, but the words Tulā and Dhaṭa also signify the whole apparatus which is prepared for the purpose, and therefore, are often used as synonyms.

Pit. explains the word Dhaṭa as follows:—'The letter Dha indicates that the balance is the embodiment of Dharma, while Ṭa stands for the wicked person. This is known Dhaṭa because it points out the guilt of the person when held in its scales.'

The balance is called as Tulā because the person is weighed (tolyate) in it. The Kkh. has, however, explained the word as follows:—'The letter Tu stands for magnanimity, while La for the lightness of the thing. Since there is a happy combination of the magnanimous and the light in this ordeal, it is known as Tulā.

The Balance ordeal is magnanimous because it is the main ordeal, the modeal ordel which explains the procedure of all the ordeals, but it is very mild in nature. It is used for the weaker sector of the society. It is thus a mild and magnanimous ordeal.

The Dh. writers have thus tried to bring out the significant character of the Balance ordeal.

The Dh. writers have recommended a very free use of this ordeal. It is made available for the persons of every caste and can be conducted in all the seasons. It is specially advised for (1) woman (2) brahmin (3) multilated, agitated or the weakened person (Vikalaḥ) (4) feeble persons and (5) the diseased according to Viṣṇu. Yāj. adds (6) the minor (7) the old (8) the blind (9) the lame, while Nār includes (10) impotent (11) sick (12) persons void of vitality (13) and the persons oppressed by calamities on all sides. According to Pitamaha, the balance is particularly meant for the wicked person.

Considered from the point of view of the value of the offence, the Balance is used comparatively for the milder purposes, though it is one of the major ordeals used for 'greater cases'.

Viṣṇu points out that the Balance should not be executed when the wind blows fast. According to Nār, it should be tried only in the absence of rain. Both these conditions are obviously meant for the correct execution of the trial. Nār, recommends Siśira as the season for conducting this ordeal, however, we find that the Dh. writers have relaxed all the season-restrictions for this ordeal. It is thus available in all the seasons. The balance must be executed in the former part of the day.

The balance must be executed on a plain and levelled ground. This condition is also important for knowing the correct position of the scales in the trial.

Procedure:

VIṢṆU

Four Hastas high and two Hastas wide balance must be prepared out of the wood of the Sāla tree. Scales should be suspended on both the sides of a five Hastas long beam. The balance should be examined by the goldsmiths or the braziers. The accused person should be weighed in one scale, against the weighing objects such as stones in the other. One should hold the two scales in a level, mark their positions and ask the person to get down. The balance and the persons who superintend the weighing should be put under restraint by oaths as follows: 'the persons considered to be the killers of Brahmins and the persons giving false witnesses will be the persons belonging to you, if you hold the balance wrongfully'.

The balance should be addressed with the following Mantra:

'Oh Dhaṭa! you are called Dhaṭa because you are synonymous of Dharma. Only you known the things that are not known by men. This person accused in the litigation is now weighed in you, and therefore, be worthy of protecting him from doubt according to Dharma.

Then the accused person should be mounted in the scale once again, and thus weighed, if he increases, he is pure according to Dharma.

If the scale or the transverse beam breaks, the person should be mounted again so that, a definite decision can be reached at.

YAJÑAVALKYA

The persons who know the weighing by balance should mount the accused person in the scale, hold the scale at a level against the weighing objects, mark them by drawing a line, and ask the person to get down.

The balance should be addressed with the following Mantra:

'Oh Balance! you are created by gods since the ancient times, as the abode of the truth. Oh Auspicious one! speak the truth and clear me from this doubt. Oh Mother! Bring me down, if I am a sinner, and take me up, if pure'.

NĀRADA

Pits should be dug two-Hastas deep in the ground according to the circumferences of the pillars, the length of which should be six-Hastas each. The transverse beam should be four Hastas long, so should be the two feet (pillars). The distance between the two feet (pillars) should be a little more than half. The transverse beam should be square and straight, made or Khādira or Tinduka wood and must have iron-rings at three places. The balance must be made of the Khādira wood without any notches, withered portions or any rents, but a similar Saṁśapa or Sāla wood also can be used in its absence. The balance must be erected at the gate of the assembly-hall or the royal palace or on a cross-road of a temple. The balance must be planted firmly in the ground and must be worshipped by offering sandal-wood-paste, garland and other unguents, as also the curds and the rice-grains, and should thus be made auspicious and sanctified by the fragrance of the oblations and the recitations of the mantras. Attended by the Lokapālas invited for the protection of Dharma, it should always be executed in the presence of many persons. The two scales should firmly be suspended from the two hooks of the beam of the balance. The person should be weighed in one scale against the stones in the other. The person must be seated in the northern scale and the stone must be placed in the southern scale which may be filled also with bricks and clay. The experts should watch the positions (of the scales) of the first weighing. The expert knowers of the weighing machine, the gold smiths, merchants and braziers should observe the position of the beam. Having first weighed the person and marked the position of the scales, they should bring him down from the balance.

After having tied the Śiraḥpatra and put him under restraints of oath, he should be asked to mount the balance again when there is neither wind nor rain. When the person thus mounts the balance, the Brahmins should address (the balance) as follows:

'Oh! Balance! since you are synonymous with the Dharma, you are called Dhaṭa. You know the sins and the good deeds of men. This person accused in this litigation is weighed by you. Oh Balance! you surpass the gods, demons, and the men in truth. You are created by the gods as an abode of truth, and therefore, Oh auspicious one! tell the truth

and make me free from the doubt. Bring me down, if I am a sinner, or hold me up if you know me as pure.

In this way, when the balance is addressed in the presence of the Lokapālas and the gods, the person should mount it again. He should then be held (in the balance) and observed. Thus weighed if he increases, he is undoubtedly pure, but if he is equal or is losing, he is not pure (i.e. guilty). If there is any breaking in the transverse beam, or the scales or the iron-hooks or ropes, or the supporting beam, he should be declared as pure.

NĀRADIYA MANUSAMHITA

The king should get prepared according to the recommended specifications, a Sama balance of 4 Hastas size, with scales suspended at the (two) ends. The two pillars should be erected together south and north and the transverse beam (Tulā) should be placed on it. The balance streched east and west must be well assembled with iron ring at the middle. The king should get the balance approved by the two litigents.

BṚHASPATI

If the accused person weighed in the balance finds himself less, he loses the case, but if he is equal or more at the second weighing, he wins it. If there is breaking in the transverse beam or the balance or the hooks or the ropes, that may account for the gulit of the person.

KĀTYĀYANA

If there is breaking in the scales or the balance or the ropes and thus if there is any doubt regarding the correct operation, the person may be tried again.

PITĀMAHA

The balance must be facing east and 'must be erected firm on a clean ground in a famous temple, or on cross-road or at the gate of the royal palace. A white-washed, wide and high balance-house may be constructed so that the balance in it may not be disturbed by dogs, cāṇḍālas or the crows. Protected by watchmen, it must have doors and must be equipped with fire, water (and grains of rice or barley).

Offering salutations to the Lokapālas, the thoughtful persons should prepare the balance from a sacrificial wood, cutting it with the mantra used for cutting a sacrificial post. The Somya and the Vānaspatya mantra may be recited for the purpose. The balance must be of 4 Hastas size, so should be the two pillars. The distance between the two pillars must be two hastas and a half. Two hastas of each of the pillar must be buried in the ground. The transverse beam must be strong and stout and should be square and straight. There should be three hooks at three places.

Arches, ten angulis higher than the balance must be constructed on two sides of the balance, and two pendulums made of clay and string, must be suspended down from the arches, touching the heads of the balance.

Two scales must be hanged on two sides. A brahmin with a composed mind should strew grass (in the scales) with its points turned towards east. The person undergoing the trial must be weighed in the western scale, while the other scale must be filled with white clay which has not got bricks, ashes, stones, skulls or bones mixed with it.

Experts in weighing by the balance machine such as goldsmiths, merchants or the braziers must be appointed as examiners. The examiners should adjust the balance in such a way that the pendulums should touch the two heads correctly. The learned person should then pour water on the balance. A Same balance is one in which the water, so poured, does not flow down. After having weighed the person (in this way), he should be brought down.

Folding his hands and facing east, the Prāḍvivāka should address the balance, 'Oh Dhaṭa! you have been created by Brahma for testing the wicked person. Dha in you indicates that you are the very embodiment of Dharma, Ta indicates the wicked person, and since you declare (Bhāvayase) the (guilt of the) person held in you, you are rightly known as Dhaṭa. You know the sins and the good deeds of all beings, and Oh Balance! only you know that which is not known by men. This person, accused of a charge is being weighed by you. Be therefore worthy to protect him from doubt according to Dharma.

A senior Brahmin knowing astrology should observe time. The experts knowing the time of the balance ordeal have recommended five Vināḍis as the time (for watching the movements of the scales).

The king should appoint pure and non-greedy Brahmins as witnesses who speak the facts observed by them, and the result regarding the guilt or the innocence of the person must be taken according to their words. If the person increases, he is pure according to Dharma. If he is less, he is not pure. According to some, the person is considered to be guilty if the two scales remain equal, but if he is thus equal, he should be considered as less guilty. If he loses, then of course, he is more guilty and if he increases, he is pure.

The King surrounded by gentlemen should honour the person declared innocent. He should satisfy the priests, the Purohita and the learned persons with Dakṣiṇā. He must give a duly signed certificate of acquittance to the person and should banish the guilty person from his kingdom.

VYĀSA

Ifs the person goes down, he is not pure; if he comes up, he is pure. If he is equal, then, he is impure. This is the rule regarding the guilt (or the innocence) of the person. If there is any breakage in the scales (or in any other part of the balance) the person must be weighed again. The decision can thus be reached at when all the doubts are clear.

KAUMĀRIKĀKHAṆḌA

Two trunks (Muṇḍakadvayam) of a sacrificial tree must be erected on a plain ground in the south-east direction. The trunks must be seven Hastas long, out of which two Hastas should be buried in the ground, so that the seen part of the trunks on the ground would be of five Hastas. The distance between the two trunks should be of four Hastas.

A strong piece of log should be placed on the two trunks and a Tulā of the size of 4 Hastas, made of Khādira, Arjuna, Śiṁśapa or Śāla wood, not having any notches, must be firmly placed on it. Similarly, two scales must be suspended from the Tulā. The Dhaṭa can also be prepared on stone pillars. A merchant or a goldsmith or a brazier, who is equal (i.e. impartial) to a friend or a foe must be appointed for holding that balance, with following words: 'The persons who are known as the killers of Brāhamṇa or those killing women or infants will be the persons of him who holds the balance in a wrong way'.

The accused person who has observed fast and knows (what he is doing) should be weighed in one of the scales and pure-white sand in the other by the wise person. Bricks, ashes, stone, skulls and bones should be avoided as the weighing objects. After weighing the person for the first time, he must be brought down from the scale. A letter (of accusation) should be tied on his head and he should be weighed again. Following mantra, which is given first by the Self-born one, must be written on the letter. 'The letter Tu is always for dignity, La is for its simplicity. Since there is a combination of dignity and simplicity you are known as Tulā. Oh Auspicious one! Free this accused person from doubt.

The person with letter on his forehead must be weighed second time, and if he weighes more, he is pure according to Dharma. If he loses, he is not pure, this has been said by the knowers of Dharma. If there is any breakage in the scales or in the Tulā, the person may be weighed again. In this way, the doubtless knowledge should be gained, and the injustice should not be hidden. All this should be conducted on Sunday after having worshipped Sun.

We thus find following important points to be studied in the Balance ordeal:—

(A) *The Preparation of the Balance:* (i) Type and size of the wood. (ii) The design of the weighing machine (iii) Other arrangements.

(B) *The Trial:* (i) First weighing of the person against the weighing objects and marking the positions of the scales (ii) Conducting preliminary rites. (iii) Addressing the ordeal with proper mantras. (iv) Re-weighing the person and watching the movement of the scales.

(C) *Retrial:*—conditions for,

(D) Signs of the success or the failure of the trial.

(A) The Preparation of the Balance:

(i) *The type and size of the wood—*

According to Viṣṇu the balance must be made of the Sāla wood. Nār, recommends Khādira as the principal wood, but Saṁśapa, śāla and other varieties can be used as alternatives in the absence of the principal one. Other varieties include Añjana, Tinduka (Ebonite or Timber), Timiśa, and Rakta-candana. These also, if selected, should not have notches, points out Asahāya. According to Pit. however any wood that can be used for a sacrificial purpose (i.e. for preparing the sacrifical post) can be used for preparing the balance.

The required wood must be cut by reciting the due Vedic mantras. These are 'Oṣadhe trāyasvainam' and 'Svadhite mainam himsiḥ', (Vāj. Saṁ. IV. I). The other mantras to be recited are the Somya mantras i.e, 'Somo dhenum somo arvantam' etc. (RV I.91.20) and 'Āpyāyasva sametu te', (I. 19.16) and the (Vānaspatya mantra i.e. 'Vanaspate śatabalṣo Viroha' (RV. III. 8. 11).

The digest-writers are divided in their opinions as regards to the utilization of these mantras. The two views expressed are: (i) Since the recitation of these mantras is meant for unseen results (Apūrva), both the mantras must be recited here (i.e. there should be a Samuccaya of the mantras). (ii) Since both the mantras have a similar meaning, any of them turns out to be superfluous. There should, therefore be an option (Vikalpa).

The majority of the writers have preferred the first view.

Another point referred by the digest-writers is that the recitation of the mantras is available here by the rule of extension (Atideśa) and not by any special recommendation.

The types of woods recommended here are meant for Tulā (the beam of the balance) and the mantras 'Oṣadhe trāyasva' etc. are naturally to be recited while cutting the wood for the Tulā, but according to the SC, the mantras are also to be recited while cutting the wood for the other parts of the balance, since the Tulā represents other parts also.

(ii) The Design of the Weighing Machine:

Before we discuss the design of the balance recommended by the Dh. writers, it will be convenient for us to know the parts of the apparatus:—

(1) *Pādau:*—The two pillars supporting the transverse beam (Akṣa). Nār uses the word Muṇḍaka. It means 'a trunk of a tree stripped of its top branches'. Word is used here in the sense of the pillar of the Balance. According to Kkh, stone-pillars also could be used. These pillars were buried 2 Hastas deep in the ground so that they remained 4 Hastas high on the ground.

(2) *Akṣa:*—It is the transverse beam fixed on the two pillars. It is meant for adjusting the beam of the Balance (Tulā). Since the size of the transverse beam is dependent on the distance between the two pillars, it is not mentioned specifically. It should naturally be of the same size as the distance between the two pillars. This is the view of SC. According to the old thinkers, however, it should be little more than the distance between the pillars.

(3) *Tulā:*—Tulā is the beam of balance.

(4) *Dhaṭa:*— The middle hook through which the Tulā is adjusted with the Akṣa.

(5) *Karkata or Kilaka:*—The two hooks at the two corners of the Tulā, meant for suspending the scales. These are iron-nails, the points of which are slightly curved like those of arrows. According to SV, they are like the horns of Karkaṭa.

(6) *Rajju:*—These are the ropes used for suspending the scales from the hooks attached to the beam of the balance. From the NMS Bhāṣya it appears that leather-straps were also used. According to VM, each scale should be tied with three ropes.

(7) *Śikyadvaya:*—The two scales.

(8) *Toraṇa:*—The two arches constructed by the two sides of the balance, meant for marking the positions of the scales.

(9) *Avalamba:*—Two pendants or the pendulums suspended from the Toraṇas and touching the two heads of the balance.

It will appear that the Dh. writers have gradually tried to improve the kind of the apparatus, eliminating its defects, and thus have tried to make it work as efficiently as possible. With the new arrangements in the apparatus, they have also made necessary changes in the rules of the trial.

The balance recommended by Viṣṇu is very simple. According to him the balance consists of two scales suspended on two sides of a beam which is fixed on a 4 Hastas' high pillar. It would appear that in this balance there is no indicator showing the position of the balance or of the scales. Viṣṇu says that the positions of the scales at the time of the first weighing must be marked well (sucihnitau kṛtvā), but that does not make clear the actual method of marking. Yāj also, like Viṣṇu, says that both–the person and the weighing objects, should be brought in a level and marked. Viśvarūpa, explaining the passage, says that one should mark the very position of the person pointing out that a particular limb is at a particular point, while Mit. says that the marking must be made at the *base of the scale* when it is in the levelled position. The SC, explaining the statement of Viṣṇu, says that the marking should be made on the part attached with the strings of the scales. From the above explanations, it is clear that though the commentators and the digest-writers have tried to be faithful in explaining the text, obviously, they have felt the difficulty in explaining the actual method of marking. In fact, the marking is necessary for indicating the difference in the position of the scales at the time of the second weighing. If we take a wide sense of 'the part connected with the strings of the scales' and understand the pillar of the balance by that, it is possible to mark on the pillar the position of the *base* of the levelled scale. This may go well with 'the marking of the base of the scale' as explained by Mit.

The later Smṛtikāras have made improvements in the weighing machine and have, thus, overcome the difficulty in marking the position of the scales. Nār. has introduced the construction of two arches (Toraṇa) on the two sides of the two scales, so that the marking

could be made on these Toraṇas, while Pit. has introduced two pendulums (Avalamba) to decide the positions of the scales. Let us study the kinds of the balances recommended by these writers.

From the description of the balance given by Nār. two types of balances are possible (which may be called as the Sama Dhaṭa and the Vyastaka Dhaṭa). In the first variety, the two pillars are buried close to each other and the balance is fixed in between the two

Table showin the Mantras to be used for Adoring various Dieties

Sr. No.	*Diety*	*Colours*	*Place assigned*	*Mantras used*					
				beginning from	*ascribed to*	*belonging to which diety*	*metre*	*nature of*	*Refer-ence*
				(a)	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*
1	*2*	*3*	*4*			*5*			
1.	Indra	Pita	East of Dharma	Indram Visvā	Madhucc-Handas	Indra	Anuṣṭup	RC	RV I. II. I
2.	Yama	Syāma	South of Dharma	Yamāya Somaṁ	Yama	Yama	Anuṣṭup	RC	X.14.13
3.	Varuṇa	Sphaṭi-kābha	West	Tvam no Agne Varuṇasaya	Vāmadeva	Varuna	Triṣṭup	RC	IV.1.4.
4.	Kubera	Vuvarṇa-varṇa	North	Rājādhi-rājāya	—	—	—	Yajus	Tai. Ar. 1.31.6
5.	Agni	Suvarṇa varṇa	South-East	Om Aniṁ dūtaṁ	Medhātithi	Agni	Gāyari	RC	RV I.12.I
6.	Nirṛti	Syāma	South-West	Mo ṣu ṇo-ghoraḥ	Kaṇva	Nirṛti	Gāyatri	RC	1.38.6
7.	Vāyu	Dhūmra	West-North	Tava	Vyaśva	Vāyu	Gāyatri	RC	VIII.26.21
8.	Iśāna	Rakta	North-East	Tamisanaṁ	Gautama	Isāna	Jagati	RC	I.89.5
9.	Eight Vasus	—	South of Indra	Jamayatra Vasavah (The sukta belongs to Visvedevāḥ)	Maitrāvaruṇa Vasiṣtha	Vasavaḥ	Triṣṭup	RC	VII.39.3
10.	Twelve Aditya	—	Between-Iśāna and Indra	Tyān nu	Sammada matsya	Āditya	Gāyatri	RC	VIII.67.1

				(a)	(b)	(c)	(d)	(e)	(f)
1	2	3	4			5			
11.	Eleven Rudras	—	West of	Arudrāsaḥ	Syavāsva	Rudrāḥ ekādaśa	Jagati	RC	V.57.I
12.	Mātaraḥ	--	Bet.Yama and Nirṛti	Brahma Jajñānam	Gautama Vāmadeva	Brahma	Triṣṭup	Yajus	Vāj. Saṁ 13.3
13.	Gaṇesa	—	North of Nirṛti	Ganānām tva	Gṛtsamada	Gaṇādhipati	Jagati	RC	II.23.I
14.	Marutām Gaṇaḥ	— —	North of Varuṇa	Marutoyasya	Rāhugaṇah	Marutaḥ	Gāyatri	RC	1.86.1
15.	Durgā	—	North of Dhaṭa	Jātavedase	Kasyapa	Durgā	Triṣṭup	RC	1.99.1

pillars by an iron nail. This type of balance is described by NMS and is explained by SC.

In the second variety, the two posts are buried with some distance between them. Asahāya gives following description of the balance. There should be six pillars of six Hastas' length. Four of them should be buried on the four corners of a ground that is four Hastas long east and west, and one and a half Hasta wide south and north. There should be two Toraṇas tied on two pillars of each side. The pillars should be buried two Hastas deep in the ground so that they remain firm and steady. Remaining two pillars should be similarly buried at the mid-centre of the longer side and a Toraṇa (transverse beam?) should be fixed on it. The Balance of four Hastas should be suspended from this (Toraṇa). An iron nail which can be a half-Hasta long should be fixed in the centre, so also the two rings at the two corners. The NMS Bhāṣya points out that the length of the strings must be such that they would not touch the ground. The scales also must be prepared in such a way that the person must be able to sit in it with comfort.

The VP points out that the width and the heaviness of the pillars and the beam of balance are not mentioned, but they may be prepared according to the stoutness of the balance required and the practice of the people.

The distance between the two pillars should be 'Adhyardha' i.e. (a) more than the half of the size of the pillars i.e. 2½ Hastas or (b) it may be 1½ Hastas. It should be pointed out that the size of Akṣa depends upon this distance.

Viṣṇu and Yāj. are silent as regards to the direction of the balance. Nār. says that the persons should be weighed in the northern scale. This means that the pillars should be erected east and west. According to Pit, the whole apparatus should face east, which means that the pillars must be south and north. It appears that Pit's recommendations were generally followed, because according to Asahāya, also, the pillars are erected south and north. It must, however, be pointed out that Nār.'s recommendation was not out of

practice and both the options were in vogue. Thus, there was no hard and fast rule regarding the direction of the balance.

Introduction of Toraṇas was eassentially meant for removing the difficulties in marking the positions of the scales, but such marking could not really help to know the correct movements of the scales. Pit. has, therefore, advised to raise these Toraṇas ten Angulis higher than the height of the balance and suspend two pendulums made of strings and lump of clay, touching the heads of the balance. Slightest movement in the scales could thus be noted by the movements in the pendulums. The rule of marking the scales was thus scraped with the introduction of the pendulums.

First, the balance is levelled by putting a little water on the beam of the balance. If the beam is perfectly horizontal without any inclination on any side, the water will remain steady, otherwise it would flow down the length of the beam. Thus, Udakaprakṣepa and Avalamba decide the level and the subsequent movements of the scales.

We have seen that Pit. has advised to construct a balance-house with so many equipments. According to Mit. this should be done when the balance prepared, is required to be preserved.

Nār. and Pit. say that the balance prepared for the ordeal must be decorated with garlands and flowers. One important point noted by NMS with regards to the preparation of the balance is that the balance prepared must be approved by the litigants.

(B) The Trial:

(i) First Weighing of the person:—

(a) The person is generally weighed in the western scale, but according to Nār. he could be weighed in the northern scale also. This naturally depended upon as how the pillars were erected. According to some writers, however, the person could be weighed in any of the scales, and no specific rule was necessary in this respect.

(b) The Weighing objects—

Earlier writers have recommended stones as the weighing objects. One could also use lump of clay. According to Pit. however, it should be white sand only, and objects like bricks, ash, stones, skulls and bones should be avoided.

(c) As soon as the person is weighed, the levelled position of the scales is marked with white chalk. It would appear that with the introduction of the pendulums on the scales, no marking was necessary.

(d) The weighing māust be conducted by the persons expert in weighing e.g. merchants, goldsmiths and braziers. According to Viṣṇu, these persons must be put under restraints of oaths.

(ii) *The preliminary rites:*

After completing the first weighing, the person should be asked to get down from the scale. The general rites common to the other ordeals, beginning with the invocation of Dharma and ending in the tying of the Sirahpatra should then follow.

(iii) *Mantras to be recited:*

Viṣṇu, Yāj., Nār. and Pit. have given various mantras to be used in the balance ordeal. The mantras given by Viṣṇu and Yāj. are obviously meant for the Prāḍvivāka and the Śodhya respectively. Nār. has combined the mantras given by the two writers, while Pit. is found mainly accepting Viṣṇu's mantras with necessary changes considered as fit by him. The later writers have therefore, accepted and advised to use Pit's mantras for the Prāḍvivāka and Yāj.'s mantras for the Sodhya.

The DT points out here that these mantras are Smarta (and not Srauta) and therefore, they could be used even by Sūdras. Similarly even if the person undergoing the trial is a woman, the mantras should not be altered (i.e. no Ūha is necessary), because the ordeal is ultimately meant for clearing the doubt or knowing the truth, and therefore it is immaterial whether the person undergoing the trial is a man or a woman.

(iv) *Reweighing the person:*

The person should be weighed in the scale for the second time. The movements of the scales should be watched for five Vināḍis. Each Vināḍi is equal to the time spent in reciting 60 long syllables, the movements of the scales should therefore be watched for the time required to recite 300 long syllables. DT puts it otherway. The movement of the scales should be watched for the time required for reciting five times the mantra Mā kānte etc. "Mā kānte' is a verse in the metre Lilākhela in which there are 60 long letters. The words are addressed by a husband to his fair wife" (Dr. Kane's notes on VM. p. 98). Since the time is to be watched accurately, a person expert in astrology, must be included in the panel of the experts of conducting Tulā ordeal, observes SV.

(C) Retrial

Retrial was allowed in the following cases. (i) when there was any defect in the weighing maching–this can be divided into two heads. (a) technical defect: for example, when there is a fast blowing wind making the scales unsteady throughout, or when the sign deciding the positions of the scales (such as water placed on the beam) fluctuates or the leaf tied on the forehead of the person blows away. (b) breakage in the weighing machine: for example, breaking of scales, ropes or the transverse beam etc. The commentators and the digest-writers have repeatedly pointed out in this connection, that the retrial in these conditions can be allowed only if the breakage in any of the part of the balance is due to the seen causes. If the breakage in any of the parts cannot be accounted

by any seen cause, it would declare the guilt of the person and no retrial can be allowed in that case. (ii) If the two scales remain in a levelled position at the second weighing, and are thus unable to give a clear verdict, retrial can be allowed in that case. According to some writers however, under these circumstances no retrial can be allowed. It is a clear case indicating the guilt of the person.

In the case of a retrial, it is not necessary to repeat the whole procedure. Only the weighing part of the trial should be conducted again. This is the view of the ancient thinkers while Kamalākara (author of Vivādatāṇḍava), Mitramiśra (Author of Vyavaha raprakaśa) etc. hold the view that the whole procedure must be repeated again, because the defect in the trial will not be removed by mere repectition of the weighing. The argument here is in accordance with the Srauta rule. 'Pradhānadravyavyāpattau Sāṅga vṛttistadādeśat (Katyayanaśrautasūtra I, 7.28).

(D) Signs of the success or the failure of the trial

Following are the signs of the success or the failure of the person in the trial. (i) If the scale in which the person is seated goes up at the time of the second weighing, he is innocent. (ii) If the scale goes down, the person is guilty. (iii) If the two scales remain equal indicating the same position as that of the first weighing, there are three different views expressed as regards to the result of the trial. They are (a) It is a case for retrial. (b) The person is less guilty. (c) The person is guillty.

It will appear that these signs are clear by themselves when they are put under regular paragraphs of law , but when they are *described*, the description tends to be vague and an apparent contradiction comes in. For example, we find that while addressing the balance, the accused person requests it to clear him from doubts, and so doing, the person himself puts the conditions of his sucess or the failure of the trial: 'The balance should take him up if he is pure and bring him down, if guilty'—he points out.

It is, however, subsequently stated that the person is pure if he increases at the second weighing. In fact, if he is to increase, the scale should go down.

It must be pointed out that increasing here does not mean increasing physically but increasing in piety. Asahāya removes the contradiction as follows. When a thing increases in weight, the scale goes down. The person who increases in piety also should go down and that should be the proof of his innocence. But the rule is that when the scale in which the person is seated goes up, he is innocent. This may be explained as follows: Just as a piece of gold heated in fire gives up its impurities and the scale in which it is weighed goes up after such purification, similarly, the person increased by piety may be pure because of the removal of impurities caused by doubts and false charges imposed on him, and may go up'.

We have seen above three views regarding the result of the trial when the two scales remain in equal positions. We must examine here the second view given in (b). Pit. puts it as follows: 'If the person increases when weighed (second time), he happens to be pure

according to Dharma, if he is less, he is not pure. According to some, he is not pure even when the scales remain equal. But, when the scales are equal he, in fact, should be declared as less guilty. If he loses, he is severely guilty and if he increases by piety, he is pure'.

Mit. points out here that, it is not possible to ascertain the lights or severs nature of the guilt of the person by the ordeal. All that follows is the inference that in the first case the crime was committed for the first time and without any set purpose, while, in the second case, it was done purposely and was not the first of its kind, the result being that in the first, the fine and the Prāyaścitta would be light, while it would be heavy in the second one.

The VP says that eventhough the writer refers here the view of 'some' with respect, it does not mean that he himself holds the opposite view i.e. the person should be considered pure if the scales remain equal. (On the contrary, the writer believes that the equal position of the scales indicates that the person is less guilty). But, suppose we are able to decide whether the crime is light or severe one [e.g. merely embracing a woman in case of an incesting person may be regarded as a light crime or suppose a thief merely enters the house (but does not steal) that can be a light crime]; what difference does it make? A crime is afterall a crime and, therefore, even if the scale goes down or remains equal, the person is guilty in both the cases. Only thing is that one could just make some exemption in punishment in such a case. Therefore, both the statements i.e. according to some the person is non-pure when the scales remain equal, and, he is less pure when the scales are equal should be neglected, since they are confusing and misleading.

DIVYAVIDHIH

After discussing the general rules regarding the application of an ordeal, we shall now discuss here the procedure of the ordeals (Divyavidhiḥ) described in the Dh. works. The procedure of any ordeal can be divided into three stages. (i) The preparation, (ii) The ritual and (iii) The trial.

Ordeal requires preparation before the trial could be conducted e.g. In the Balance ordeal, one has to prepare the balance, in the Fire ordeal, the iron-ball is to be heated and the necessary circles are to be drawn, in the Water ordeal, proper site on the bank is to be selected, an arch is to be erected and so on. Similarly in other ordeals also we have to make some preparation. Observing fast and taking bath by the Prāḍvivāka and the accused person also come under preparation.

In this respect we find that, in the earlier days only the person under going the trial was asked to observe fast, take bath and be present for the ordeal with wet clothes on. In the later days of the elaborate procedure, the Prāḍvivāka is also required to undergo these preliminaries.

The Prāḍvivāka should be a Brahmin well-versed in the Vada and the vadāṅgas,

possessed of factual knowledge, calm and composed, without any enviousness, adhering to truth, pure and alert, sympathetic to all beings. He should observe fast, brush his teeth, take bath and with clean clothes on, he should offer adorations to all the deities with due procedure.

He should administer the ordeal to the person who observes fast for three nights or one night and thus after getting purified, presents himself with wet clothes on.

The Mit. here points out that the option regarding the number of the days for which the person is required to observe fast should be decided on the basis of the personal health of the accused person and the seriousness or the lightness of the purpose for which he is tried. Of course, the rule of observing fast applies to both, the Praḍvivaka and the accused person.

The Ritual

The Praḍvivaka should conduct all the activities of the trial just as the Adhvaryu would do in a sacrifice. The simile thus stresses the importance of the ritualistic part of the ordeal.

The rituals to be performed at an ordeal can be divided into two parts. (a) Invoking the deities and offering due adorations. (b) offering oblations in the fire (a) is personally conducted by the Prāḍvivāka, while (b) is carried on by the various priests.

(a) Invoking the dieties:

The Prāḍvivāka should invoke the gods to the accompaniment of music played on musical instruments and the beatings of the drum and offer sandal-wood-paste, flowers and other anointments. Folding his hand, he, facing east, should invoke Dharma alongwith the company of the Lokapālas (guardians of quarters) Adityas, and the Maruts with the words, "Come, come, Oh God Dharma, Be present at this ordeal."

Having thus invoked Dharma at the ordeal, he should assign places to the subsidiary deities. Having assigned places to Indra, Preteśa (Yama), Varuṇa and Kubera in the East, South, West and North respectively, he should assign places to Lokapalas such as Agni etc. in the corner-directions. He should then contemplate these deities having various colours i.e. Indra as yellow, Yama as dark, Varuṇa white as marble, Kubera as golden, Agni also golden, Nirṛti as dark, Vāyu as smokey, and Iśana as red. After this, he should invoke (a) 8 Vasus (b) 12 Ādityas (c) 11 Rudras (d) 7 mother goddesses (e) Gaṇes'a (f) Maruts and (g) Durgā–.

All these deities should be invoked by repeating their individual names.

(a) *8 VASUS*	:	Dhara, Dhruva, Soma, Āpaḥ Anāla, Pratyūṣa, Prabhāsa.
Place assigned	:	South of Indra.

(b) 12 *ADITYAS*	:	Dhātṛ, Aryamā, Mitra, Varuṇa, Aṁśa, Bhaga, Indra, Vivasvān, Pūṣan, Parjanya Tvaṣṭṛ, Viṣṇu.
Place assigned	:	Between Indra and Iśāna.
(c) 11 *RUDRAS*	:	Virabhadra, Sambhu, Giris'a, (—of great fame), Ajaikapāda, Ahirbudhnya, Pinākin, Aparājita, Bhuvanādhiśvara, Kapālin (—the lord of hosts), Sthāṇu, Bhava,
Place assigned	:	West of Agni.
(d) 7 MOTHER	:	Brhāmi, Maheśvari, Kaumāri, Vaiṣṇavi, Mahendri, Cāmuṇḍā, Vārāhi.
		GODDESSES.
Place assigned	:	Between Yama and Nirṛti.
(e) GAṆESA	:	Place assigned : North of Nirṛti.
(f) 8 *MARUTS*	:	Pavana, Sparśana, Vāyu, Anila, Marut, Prāṇa, Prāṇeśa, and Jiva.
Place assigned	:	North of Varuṇa.
		(VN quotes the names of Maruts from Smṛtyantara as follows—Āvaha, Vivaha, Udvaha, Samvaha, Nyavaha, Nivaha, Pravaha, Jivaha).
(g) *DURGĀ*	:	Place assigned: to the north of Dhaṭa (i.e. the place of ordeal that is being conducted).

VM supplies us here the actual Mantras that are to be used for invoking the deities and contemplating them as possessed of the colours. The digest points out that, in the beginning the accused person should declare the auspicious place and the moment of performing the ritual of the ordeal and should declare the purpose in mind (Sankalpa) for which this whole ritual is undertaken e.g. I would now perform such and such ordeal for knowing the purity of the self...' and ask the Prāḍvivāka and the priests (Ṛtviks) to undertake the responsibility of performing the whole ritual by presenting them pieces of clothes.

According to Bhaṭṭa (Raghunandana), after this the Svastivācana also may be performed, VM points out.

VM (pp. 63-66) gives us the various Mantras for invoking these deities. These can be given in a tabulated form as follows.

Offerings offered to the deities:

Pit. points out that the Prāḍvivāka should first offer several items of worship from Arghya to ornaments to Dharma and then to the subsidiary deities. After this, all the deities (i.e. from Dharma to Durgā) should be offered Sandalwood paste, flowers, incense, lamp and Naivedya.

Mit. explains this as follows:—After invoking Dharma with words "Ehi, ehi..." etc. the Prāḍvivāka should offer Arghya (water offered by way of respect) Padya (offering water for washing feet), Ācamanīya (sipping water for rinsing mouth), Madhuparka (a respectful offering of honey, curds etc.), Snāna (bath), Vastra (clothes), Yajñopavita (sacred thread), and ornaments like crown, golden bracelet etc., muttering the words 'Dharmaya arghyama kalpayāmi namaḥ, (I prepare these offerings to Dharma. Salutations to him). In case of the subsidiary deities like Indra etc., he should repeat the name of each deity in its dative form preceded with praṇava (e.g. Om Indrāya Kalpayāmi, Indrāya namaḥ) and offer offerings from Arghya to ornaments according to the appropriateness of the item offered to that particular deity. (Padārthānu-samayena).

This is further made clear by digests SC, VM, SV etc. by pointing out that the offerings offered to the subsidiary deities must be according to Padārthānu-samaya and not Kāṇḍānusamaya, which means that the offerings must be offered looking to the appropriateness of the item offered and not promiscuously (i.e. following the words of the Prayoga) e.g. ornaments being particularly appropriate to female, the Bhūṣaṇa is to be offered to Durgā alone amongst the subsidiary deities. Arghya is thus offered to all the deities from Indra to Durgā one after another; then Pādya, then Acamaniya and so on, but Bhūṣaṇa only to Durgā. After this, sandal-wood paste, flowers, incense, lamp and Naivedya should be offered to all.

If these deities are offered Arghya etc. promiscuously, the necessary 'togetherness of all the deities' (sahabhāva) will not be achieved, points out VP.

The flowers and sandal-wood paste offered to Dharma must be red while in the cases of the other deities they may be red (if available) or of any other colour since the texts do not prescribe any specific colour for them.

(b) Offering oblations in fire:

After offering adorations to the deities by the Prāḍvivāka is thus over, the priests are asked to offer oblations in fire. Pit. says, 'Brahmins expert in Vedas should perform Homa in four directions with Ājya (clarified butter) Havi (Caru) and samidh as the substances of the oblations, reciting Sāvitri mantra with Pran+ava in the beginning and Svāhā at the end.

Mit. explains this as follows:—Four priests should perform Homa in four directions. The oblations should be offered in the Laukika Agni (i.e. Agni kindled for the purpose and not any of the three famous Agnis) reciting gāyatri mantra (Tat Savituḥ etc.) beginning with praṇava (Om) and again praṇava (Om) ending with Svāhā. Each of the three substances, Ājya, Haviḥ and Samidh must be offered for 108 itmes.

In this respect, the SC quotes the general rule that when no specific number is mentioned, the thing should be done 108 times.

Following the instruction in the Devipurāṇa, the number of the oblations offered may

be 108, 28, or 8 as per ability of the person, points out DT.

It must be pointed out that the Mit. expresses above a view that each of the three substances should be offered separately. Most of the digests also have favoured the same view, but Raghunandana, the author of DT, holds that all the three substances should be combined and offered collectively. Nilakaṇṭha the author or VM has, however, refuted his arguments and has supported the view of the Mit.

According to Raghunandana, the three substances i.e. Ājya, Haviḥ and Samidh should be thrown together on to fire as is done in the case of Sānnāyya offerings. Sānnāyya is the mixture of Dadhi and Payas. They are combined into a single offering because both of them are offered to the same deity (Indra). Ājya, Haviḥ and Samidh in the present case are also offered to the same deity (i.e. Dharma as principal and Indra and others as subsidiary) and, therefore, all the three should be combined. In doing so, we achieve what is technically known as Tantra (i.e. avoiding unnecessary repetitions and achieving togetherness of the actions).

Nilakaṇṭha points out that Dadhi and Payas could be combined in the Sannayya offering because (i) they are offered to the same deity and (ii) The same kind of vessel is used in offering them. In the case of the three substances under discussion, we find that Ajya is offered with Sruva, Havi with Sṛc and Samidh by hand and, therefore, the three substances are of different nature requiring three different means. Therefore, the principle of Tantra is not applicable here. All the three should, therefore, be offered separately. The ritual of the ordeal ends with these offerings.

Dakṣiṇa should be paid to the preists after the whole ritual is over.

After this, we find that a letter known as Sirahpatra is tied on the forehead of the person. The actual charge for which the person is undergoing the trial is written on the letter alongwith the following Mantra, 'The Sun, the Moon, the Wind, Fire, Heaven and Earth, Waters, the Heart, Yama, Day and Night, the two twilights and Dharma know the deeds of men.

In some cases, the mantras with which the person addresses the deity of the ordeal are also written on the Sirahpatra. These mantras usually contain the signs of the success or the failure of trial.

This is the procedure common to all ordeals. With respect to the ritual of ordeal, we may observe following points:— (i) These rituals help in heightening the religious sentiments of the person. They thus help in enhancing the psychological effect of the trial. The ordeal thus becomes a religio-psychological test. (ii) With so many rituals the test turns out to be mainly a religious performance. The person would therefore willingly undertake it. (iii) Particularly with the rituals, the ordeal becomes an elaborate and costly job involving a variety of men and matter. This may serve by itself as an indirect check over the mass-practice of the ordeal.

(iii) The Trial

We will now discuss the procedure of the nine ordeals in the order given by the Dh. writers. The order is :—(1) Dhaṭa (Balance), (2) Agni (Fire), (3) Jala (Water), (4) Viṣa (Poison), (5) Kos'a (Sacred Libation), (6) Taṇḍula (Rice grains), (7) Taptamāṣa (Hot coin), (8) Phala (Ploughshare), (9) Dharmādharmau (the ordeal of Dharma and Adharma).

DIVYAMĀTṚKĀ

The word Sirṣakastha is explained by Mit. as Śirṣake Tiṣṭhatiti Śirṣakasthaḥ. The word Śirṣa denotes the last stage of the judicial procedure which declares the judgment resulting into the award of the punishment for the party defeated. Sirṣakstha is, therefore, a person who is due for such punishment.

Avaṣṭaṁbha also means same as Śirṣakastha.

If the person undergoing the trial comes out successful, it only proves that the person insisting upon his undergoing the trial, the accuser, is at wrong and is defeated. Under the rule of Śirṣaka, the accuser is thus punishable if the accused undergoes the trial successfully. The accuser should give a declaration to the effect that he would undergo the punishment awarded in such a case.

The Śirṣaka thus curbs a tendency on the part of the accuser to make false allegations or insist wrongfully on a particular person's undergoing the trial.

According to Viśvarūpa, the accuser should offer to pay requisite money or the whole of his wealth or be prepared to part with any of his limb or even the head in this bond. SC points out that there can be provision of any sort of punishment in the Sirṣaka—either physical or in form of some fine. The digest points out that Sirṣaka is advisable from the accuser's point of view also, since it would help him in proving or substantiating his own case in the litigation.

Following are however the cases of exception i.e. the ordeal may be resorted in these cases even without a Sirṣaka—

(i) Grave charges (such as adultery, grave sins etc.) or the cases in which many persons collectively put any charge on anybody or when the person himself is interested in self-acquittance.

(ii) When the king orders his own servants to undergo the ordeal or when the king himself suspects the guilt of a person (according to Nār. read by VM).

(iii) When the person is accused by some public scandal.

(iv) When persons are pointed out as the members of a gang of thieves, by some thieves.

(v) Kośa ordeal which is in general recommended for the self-purification of a person, can be resorted to without Śirṣaka. Because of this special concession

accorded to the kośa ordeal, Kāt, is found recommending strict punishment for the accuser, if the accused person successfully undergoes the Kośa in which Sirṣaka is assured by the former.

SC gives an important rule i.e. the condition of Sirṣaka is only to be observed when the ordeal is to be conducted in the court of the king or the Prāḍvivāka. In other court, sirṣaka is not necessary even if the cases are to be tried for grave charges.

(C) Besides the condition of śirṣaka, it is necessary to see that both the parties agree to decide the dispute by an ordeal. Any ordeal can be resorted to only after obtaining such a consent from the litigating parties.

Onus of the proof

In the previous chapter we have seen the general rules regarding the onus of the proof. In case of an ordeal, the general rule is that the defendant is required to prove his innocence by undergoing the trial. 'Experts of ordeal' should thus conduct the trial on the defendant (abhiyukta) and not on the plaintiff (abhiyoktā) points out Kāt. Another important provision for the trial by an ordeal is that either of the party can willfully offer to undergo the trial only condition being that the other party should assure the śirṣaka. This is possible, points out Mit. because of the fact that the other proofs (the human proofs) can prove only the positive side of the charge. There are, therefore, fixed rules regarding the discharging of the onus of the proof. The ordeal can prove the positive as well as disprove the negative side of the proposition. Secondly, the ordeal is never forced on anybody. It is always undertaken willfully. The defendant can thus refute the charges made by the plaintiff and prove his innocence by undergoing the ordeal, or, the plaintiff may, by resorting to an ordeal, prove that the charges made by him are not false.

According to Kāt., certain people are not eligible to undergo the ordeal. These persons could therefore appoint representatives for undergoing the trial.

Persons entitled to undergo the ordeal *(Divyādhikārri)*

Dh. writers points out that one should choose a proper ordeal and conduct it according to the prescribed rules. For the selection of a particular ordeal one has to take into consideration the suitability of place and time, the seriousness of the offence committed and the abilities of the person who is to undergo the trial. The appropriateness of an ordeal should thus be decided on the basis of the caste, sex, age and the general condition of the person undergoing the trial. Social status of the person is also an important point to be considered in deciding the ordeal. These may be discussed as follows:

(a) Consideration of the ordeal from the caste point of view :—

The ancient Indian society was mainly organised on the basis of the theory of castes. The four castes (Brahmaṇa, Kṣatriya, Vaiśya and Sūdra) are mainly based on the ethical

standards and the way of life adopted by the individuals and have played a great role in maintaining the great cultural and ethical standards of the society. The theory of castes which is the very back-bone of the Indian, society had thus a very vital influence on the law-making. The ancient law-makers, however, viewed the respective castes from the point of view of the great heritage and ethical standards they were supposed to maintain.

The ordeal was, no doubt, a very helpful means towards practical justice. In the legal context, however, it could hardly be used as a convincing proof, unless one viewed at it as a method of challanging man's inner conscience for telling the truth against the supposed divine intervention. It required a peculiar psychological set-up of the person undergoing it and could be valued best, only in its restricted use. The Indian law-makers utilised the philosophy of castes for a double purpose, for dignifying the value of the ordeal as a means of truth-telling on one hand and for restricting its wide-spread use on the other.

A Brahmin, the preceptor and the preserver of the Vedic lores, must speak the truth. Is it necessary to ask him to tell the truth? He should only be asked to tell and whatever he tells must be the truth. Manu, therefore, says, 'A Brahmin should be asked to tell, a Kṣatriya should be asked to tell the truth, a Vaiśya should be asked to tell the truth for all his wealth (i.e. cow, corn and gold) and a Sūdra for all his deeds.'

With these standards, thus, it was a degrading affair, if a Brahmin was asked to, or required to, prove his truth through some external means–say an oath. Gautama, therefore, pointed out that a Brahmin should not be asked to undertake an oath.

But, similar to the evolution of the three grades of the Vedic seers referred to by the Nirukākāra, we find here a great social process resulting into an over-all degradation from the expected high standards.

Next provision therefore is, 'A Brahmin should swear by his truth, a Kṣtriya by his vehicle or weapon, a Vaiśya by his wealth and Sūdra by his deeds.'

Thus we find, that a Brahmin who was not required to prove his truth through external means (like oath etc.) and was thus exempted from taking an oath—is now asked here to take an oath of truth.

In due course, we find that, Viṣṇu recommends mild ordeal for a Brahmin for a serious kind of allegation. A Brahmin may thus undergo Tulā. Viṣa, however, should not be given to him, he points out. Following distribution of ordeals on the basis of castes was consequently made by Yāj.—Tula for Brahmin, Agni or Jala for a non-Sudra and Viṣa of seven yavas' quantity for a Sudra.

Nār., Kāt., Pit. and other minor Smṛtikāras made the above details more specific i.e. (i) Tula for Brahmin, (ii) Agni for Kṣatriya, (iii) Jala for Vaiśya and (iv) Viṣa for Śūdra,—with a special rule that Viṣa should not be given to the Brahmin.

On the basis of these details, Viśvarūpa, the commentator of the Yājñavalkya Smṛti, interpreted the Yāj. stanza quoted above with following options:—

(i) Vyavasthitavikalpa should be resorted to: we should thus get Tulā for Brahmin, Agni for Kṣatriya, Jala for Vaiśya and Viṣa of 7 yavas' quantity or Jala or Agni for a Śūdra.

(ii) Option to select any of Agni or Jala or Viṣa in the cases of Kṣatriya and Vaiśya while, Viṣa is made compulsory for the Sudra.

We thus find that milder ordeals are recommended to the persons of higher castes and severe ones to those of inferior ones, but as we have seen above, the Dh. writers are not really to be blamed as being partial to a section of the people here, because the classification originally aimed at maintaining the higher ethical standard of the society.

However, once a person is due for a trial, this sort of classification or distinction between individuals on the basis of castes was rather unjust.

The Dh. writers realized this soon. Kāt. and others thus introduced the theory of every ordeal for everybody. They discouraged the classification of ordeals on the basis of castes. This will be clear from the following points:—

(i) It is interesting to see that the castewise classification is available only with reference to the original five ordeals described by the old writers. Subsequent ordeals added to these five by the later writers are not found classified on the basis of the caste. On the contrary, these writers advocated the theory of every ordeal for everybody.

(ii) An ordeal is employed in accordance with the seriousness of the crime which is decided by the old writers like Viṣṇu on the basis of (a) The value of the offence in terms of gold and (b) The caste of the person. Now, explaining these rules, the later writers drop the caste-wise classification as far as the seriousness of an offence is to be considered, and recommend three grades of persons i.e. Uttama (Higher grade), Madhyama (Middle grade) and Nikṛṣṭa (Lower grade), based on the conduct of the person. Explaining the Yāj. stanza, Aparārka therefore points out that accepting the view that every ordeal is applicable to everybody, one should interprete the castes according to the merits of the person.

It will be, thus, clear that the later writers did not encourage the caste-wise classification of ordeals. They were, however, handicapped in one respect. As the writers of Śāstric works they had to follow the canons of the Śāstra, which attached highest importance to the tradition and the technical set-up. As such, they did continue the traditional information of the caste-wise classification of the ordeals in their works. We thus find that Kāt. who established the new theory of every ordeal for everybody, has also given the traditional caste-wise classification.

It must, however, be observed that the caste-wise classification was helpful, in a way, in restricting the free use of ordeal with dignified limitations.

The Dh. writers expected that a Brahmin should not be required to prove his truth through external means. It thus becomes a degrading affair for him if he is required to

undergo an ordeal. A person of status, particularly the religious status, would not thus prefer to undergo an ordeal. There was thus a self-made restriction imposed by a person of high order on the use of ordeal. If the dignitaries of the society also indulged in use of ordeals, it would initiate the commoner to make a very free use of the method. But the fact that the dignitaries tried to keep themselves away from the ordeal helped in its own way in maintaining a wholesome check over the free use of ordeal.

Consideration of ordeals from the caste point of view was originally conceived with the idea of making good use of this valuable means by relating it with the moral standards of the society, but when the castes had come to be merely formal, decided on the basis of the birth of the person, there was no rational ground to make distinction between person and person. The question was thus required to be considered on a different footing.

Kāt. who started re-thinking in this direction pointed out that many Dvijas—person born of higher castes—such as cow-herds, traders, artisans, bards, domestic servants and usurers (Vārdhuṣika) should be considered as Sūdras as far as trial by ordeal is concerned. Viṣa is denied for a Brahmin of a very high order only (Dvijottame). He thus introduced a new principle for the use of the ordeal. i.e. every ordeal for everybody.

(b) Unhealthy elements in the society:

Just as the higher dignitaries of the society were expected to remain away from a direct involvement in the trial, so also, it was necessary to see that the ordeal did not go in the hands of the unhealthy elements of the society. In wrong hands, there was every possibility of the ordeal being misused. The later writers are found complaining with greater concern against the possibility of the people resorting to the deceipts or frauds (Kuhaka) in these trials. Kāt., therefore, preferred to disallow certain people from undergoing such trials. 'No ordeal should be performed by those charged with the murder of mother, father, brahmin, teacher, minor, woman or king; those who are athiests, who wear by particular sect-marks, great rogues, experts in incantations and yoga, who are the progenies of the unions of the persons of different castes and those who are repeatedly engaged in sins. Persons engaged in greater sins, (Brahmahatyā, Steya, Adultery etc.) athiests and the persons engaged in sinful acts as such, should never be recommended by the king for a trial by ordeal.

Obviously, the idea behind this prohibition appears to be of saving the ordeal from going into wrong hands. But, that does not mean, points out SC, that the cases of the prsons referred to here should not be investigated by an ordeal at all. In fact, Kāt. himself wants that the ordeal must be undergone by the gentle persons. He says that the persons who are prohibited to undergo ordeal should appoint gentle persons for undergoing it. SC points out that this rule is applicable when the relatives of such persons are not available. Any way, this whole section makes provision for the appointment of a representative for undergoing the trial in the cases of the persons who are prohibited for the same, points out VP.

N = Niṣka, K = Kṛṣṇalas Y = Yava, G = Goyvyakti

	In Terms of Vya.Niṣka			In terms of Kārṣāpaṇa		
	Nikṛṣṭa	Madhyama	Uttama	Nikṛṣṭa	Madhyama	Uttama
Viṣa	12½ N	25 N	50 N	1000	2000	4000
Agni	9 N + 7½ K	19¼ N	37½ N	750	1500	3000
Jala	8 N 7 K – 1 Y	16 N 13 K + 1 Y	33 N 7 K – 1 Y	670	1340	2680
Dhaṭa	6¼ N	12½ N	25 N	500	1000	2000
Taptamāṣa	5 N	10 N	20 N	400	800	1600
Taṇḍula	3 3/4 N	7½ N	15 N	300	600	1200
Kosa	1 7/8 N	3 3/4 N	7½ N	150	300	600
Dharmaja	1¼ N	2½ N	5 N	100	200	400
Phāla	1 G	2 G	4 G	Phāla is strictly reserved for Gocoraand is dependent on the number of cows stolen.		

(c) Suitability of the ordeal for a particular society :

The ordeal is, after all, a social custom which can influence the people who believe in it. Indian society–based on the principle of four castes and believing in the Vedic traditions–was gradually growing complex developing into various sorts of people having their own sects and cultural traditions. It was not possible to satisfy these people with the traditional Dharmaśāstra methods. Kāt. therefore provides that such people should not be tried with these methods. These persons should be dealt with the methods propularly believed by them. 'When untouchables, men of lowest castes, slaves, mlecchas, and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their crime should not be made by the king (in his court by the traditional methods). He should indicate such ordeals as are in vogue among them.'

DT explains that the ordeals welll known among these people are those of snake in the jar and alike.

As regards to the ordeals to be practised by the persons born of the unions of mixed

castes, VN refers to the arrangement prescribed by the older writers according to which, ordeals popular with the people of the mother's side should be used for the person born of the couple married according to the Anuloma marriage, while those popular with the father's side should be followed for the person born of the parents married according to the Pratiloma system.

(d) Personal ability of the individual undergoing the trial :

Having thus analysed the suitability of an ordeal in a greater context of the social environment of the person, we find that, the Dh. writers have considered the problem of the victimization of an individual in an ordeal and have rather given a very practical solution to it by recommending only suitable ordeal to the suitable person.

The ordeal must be selected on the basis of the strength of the person which may be either of the kind of the physical endurance required for undergoing the trial or of that of the psychological set-up of the person. As a divine method of investigation, the ordeal has a vital influence on the religious-minded person. The Smṛtisāra therefore points out that the ordeal must be selected on the basis of the religious strength of the person. It is not possible that a person of high religious belief, devoted to god, offering daily worships in accordance with his family traditions, would just lie for a trifling matter. The religious strength of the person should therefore, be taken into consideration in selecting the ordeal, the digest opines.

The physical endurance required for undergoing a particular ordeal is, of course, an important factor considered by the Dh. writers. The success of the water ordeal, for example, depends upon one's ability to control the breath. It may not, therefore, be a suitable test for the person who is suffering from the breathing trouble. On the contrary, it may not be an ordeal at all for the person who gains subsistance from water and is habituated to dive deep in water such as a fisherman or a diver. The water ordeal would thus prove unsuitable in both the cases. Blacksmiths are habituated to work in severe heat and remain in direct contact of fire. The fire ordeal would therefore, be a meaningless test for these persons. Poison is not favourable to the health of the person suffering from leprosy or other skin diseases. A person knowing Mantra and Yoga can on the contrary nullify the effect of the poison by means of various antidotes. The rice ordeal would be unsuitable for the person who is suffering from the diseases of the mouth, or one who has taken a vow of not eating rice. The Kośa ordeal which can influence only the god-believing person, cannot be effective in the case of an athiest. We thus find that these ordeals are recommended only for the persons who are capable of undergoing them and are denied to the unsuitable ones.

Various types of persons referred to be the Dh. writers either as suitable or unsuitable for a particular ordeal can be analysed into following groups:

A. Physical health of the person:

(i) Healthy—

1. Strong (Balin),

(ii) Healthy but without any endurance—

2. Woman (Stri), 3. Minor (Bāla), 4. Old person (Vṛddha) 5. Weak (Durbala), 6. A lean person (Kṛśāṅga), 7. Not capable (Asamartha).

(iii) Unhealthy—

(a) *Disabled:*

8. Blind (Andha), 9. Lame (Paṅgu), 10. Impotent (Kliba) 11. Infirm (Vikalendriya).

(b) *Having some disease:*

12. Person suffering from bile (Pittarogin), 13. White leprosy (Svitri), 14. Leprosy (Kunakha), 15. Leucoderm a (Kuṣṭha), 16. Breathing trouble (Śvāsakasin), 17. Cough and bile (Pittaśleṣmavat), 18. Disease of the mouth (Mukharogin), 19. Diseased in general (Ātura or Rogī or Vyādhita).

B. Psychological condition of the person:

(i) *Persons with peculiar kind of mental attitude—*

20. a person full of miseries (Arta or Bhṛśarta), 21. Un-energetic (Nirutsaha), 22. fool (Mu rkha), 23. A person afficted by various diseases (Vyādhikliṣṭa), 24. A person turned non-religious (Nirdharma), 25. A person afficted by various sorts of difficulties and miseries (Paritapardita), 26. A person without any courage (Sattvahina).

(ii) *Persons with particular kind of nature—*

27. Timid (Bhiru), 28. Greedy (Lubdha), 29. Wicked (Duṣta), 30. Despised or contemptible (Kutsita), 31. Ungrateful (Kṛtaghna), 32. Rogue (Praśaṭha), 33. Cheat (Kitava), 34. Athiest (Nāstika), 35. God-fearing (Saśūka).

C. Profession of (or a particular way of life adopted by) the person:

36. Blacksmith (Lohaśilpin), 37. a diver or a fisherman (Ambusevin), 38. person knowing incantations and yoga practices (Mantrayogakriyavid), 39. an ascetic (tapasvin), 40. a person who has observed vow (Savrata), 41. a person who wears marks particular to his sects or a Brahmacārin (Liṅgin), 42. A Vratya, 43. Gocāra (Farmer).

D. Persons having various habits:

44. a drunkard (Madyapa), 45. a person addicated to woman (Strivyasanin), 46. a person engaged in evil acts (Kukarmaṇi rata), 47. Engaged in sinful acts (Pāpābhyāsarata),

48. a great sinner (Mahāpātakin).

(E) Social position of the person:

49. Poor (Alpadravya), 50. Beggar (Nirdhana), 51. person not having son (Aputra), 52. a person born of mixed unions (Varṇasaṅkarajāta), 53. Untouchable (Aspṛśya), 54. born of low caste (Adhama), 55. Slave (Dasa), 56. Mleccha, 57. person born of the union in the reverse order of caste (Pratilomyaprasūta).

Commentators have explained some of these words, which shows how they were taken with their defined legal accuracy. e.g. Stri means a woman in general—irrespective of her caste, age or individual position, Bāla means a boy i.e. below sixteen-irrespective of his caste; Vṛddha is the person below eighty, (this means that a person beyond eighty was not considered for ordeal) and so on.

Ordeals	*Recommended*	*Not recommended*
1. Tulā	2, 3, 4, 7, 8, 9, 10, 11, 19, 25	Nil
2. Agni	1	7, 8, 13, 14, 15, 36
3. Jala	1	16, 17, 19, 21, 23, 27, 37
4. Visa	1	2, 3, 4, 12, 15, 17, 19, 38
5. Kosa	35	24, 31, 34, 42, 44, 45, 55
6. Taṇḍula	Nil	18, 40
7. Taptamāsa	Nil	Nil
8. Phāla	43	Nil
9. Dharmādharmau	Nil	Nil

The following table would show for which particular ordeal these persons were either recommended or not recommended.

Following observations should be made as regards to these rules:—

(i) Tulā is in general made available to all. There is, therefore, no question of its not recommending to anybody. Cases in which it could be *specially recommended* are noted in the column 'recommended'.

(ii) Agni, Jala and Viṣa are, on health grounds, not suitable to certain persons. These are referred to in the column '*not recommended*'. For the rest, they are applicable. These ordeals are particularly meant for the strong persons. Nār. has in general denied ordeals in the cases of the persons referred to in 2,19,20,39 and 40. According to Asahāya, though no specific ordeal has been mentioned here by the writer, we can learn from the immediate context that it is the fire ordeal that is denied here. According to SC however, the denial here refers to the Agni, Jala and Viṣa. Anyway, if we drop the persons for whom these ordeals are not considered fit on health ground, they are applicable to all those who are

capable of undergoing them. Taṇḍula is similarly denied only to those who cannot undergo it. Kośa is also similarly denied only to those to whom it is, temperamentally, not suitable. The rest of the ordeals are freely available to all since they are not denied to anybody. It will be thus clear that the Dh. writers have mainly considered the availability of the ordeal rather than its non-availability. They have seen that suitable ordeals are recommended to suitable persons only.

It may be pointed out that the ancient law makers in India have accorded many legal, fiscal or penal privileges to the infants, aged, diseased, distressed and helpless. 'It is evident from the rules that a general protection was extended by the state to infant and helpless persons as long as they were not capable of transacting legal business. They received a legal guardian in the person of the king...

.....In the case of the ordeal, however, the reason for according these persons special priveleges was not of granting special protection, but due to understanding that these persons were unable to endure difficult ordeals. It was understood that these persons would perish immediately, for instance, after diving in case of an ordeal by water. The Dharmaśastras, having thus in mind the feebleness of the person to whom they usually accorded special, priveleges stated that if these persons, if not completely exempt from ordeals should be at least submitted to such an ordeal in which their feebleness was not a handicap, that is, to the ordeal by balance which consisted in double weighing, before and after exhorations. We thus find a spirit of tolerance, kindness and concern for the weakness of mankind. The Dh. writers should thus be credited for giving a very practical solution to the problem of victimization of an individual in an ordeal without belittling the utility or importance of the method.

(3) Rules for selecting a proper ordeal :

The Dh. writers insist upon selecting a proper ordeal and executing it according to the recommended procedure. If this is not done, the ordeal may fail in achieving the desired goal, they point out. Need for selecting the proper ordeal becomes prominent with its development in the legal sphere. Nār., Kāt., Bṛ. and Pit who have tried to develop law in all its technicalities, have naturally developed the ordeal also in its legal details.

As regards to the selection of an ordeal, Nār. says that the selection must be made on the basis of the strength of place and time. (Deśakalabalapekṣam—Etacca deśakalabala pekṣam kuryāt; yādṛśam deśakalayorbalam vibhāvyate tadbalāpekṣam sadhanam kuryat-Asahaya). The Smṛtisāra reads the stanza as Arthakālabalāpekṣam and takes Artha (seriousness of the charges or the magnanimity of the prupose), Kāla (auspiciousness or inauspiciousness of the time) and Bala (the religious strength of the person undergoing the trial) as three independent factors necessary to be considered for selecting the ordeal.

Thus, if we summarize, following are the factors considered for the selection of an ordeal:—(i) Personal ability of the person undergoing the trial. (ii) Seriousness of the charge (iii) The time and (iv) The place of conducting the trial. As we have already

discussed the first point in our discussion regarding Divyādhikāri (person entitled to undergo the trial), we shall dicuss here the remaining points in due order.

(A) Consideration of the ordeal from the point of view of the seriousness of the charges:

The ordeal could be utilised with advantage in the disputes in which no human proof was available. These were generally the cases of Rājadroha (Treason) and Sāhasa (Heinous action) in which attempts were often made by the culprits to destroy all possible evidence. A king was, therefore, advised to make a free use of ordeal in all such cases. He could select any ordeal considered proper by him for the purpose.

In the cases such as the repayment of debts (Ṛṇādānam) or deposits (Nikṣepa) or theft (Steya), however, the king was asked to recommend only the suitable ordeal which could be decided on the basis of the seriousness of an offence to be calculated in terms of money.

We thus find various ordeals classified in due order in accordance with the seriousness of the offence.

VIṢṆU

Viṣṇu points out that the value of an offence must be measured in gold. He give us a table indicating the value for which the following methods are applicable:

Durvākara........for less than or upto	1 Kṛṣṇala
Tilakara................for less than or upto	2 Kṛṣṇala
Rajatakara............for less than or upto	3 Kṛṣṇala
Suvaṛṇakara............for less than or upto	4 Kṛṣṇala
Siroddhṛtamahikara for less than or upto	5 Kṛṣṇala
Kośa............for less than or upto	6 Kṛṣṇala

It must be observed that Viṣṇu does not give the respective value for which each of the higher method could be used. Vivādacandra points out that the minimum value required for any of these methods should be half a Survaṇya.

An important point referred to by Viṣṇu with regards to the valuation of an offence is that, such valuation must be made on the basis of (i) the money involved and (ii) the qualities or the caste of the person undergoing the trial. If the person is the repeater of the offence (Prāgdṛṣṭadoṣa) his act would naturally be treated as more serious. As regards to the caste of the person, Viṣṇu points out that the values given in the above table are with reference to a Śūdra; in the cases of Vaiśya, Kṣatriya and Brāhmaṇa, the given amount should, respectively be doubled, trebled or made four times.

YĀJÑAVGALKYA

Yāj. point out that Phāla, Viṣa and Tulā should not be tried for the offences valued to be less than 1000 Paṇas. The Mit. advises us to include the Jala also in the list. Thus, out of five ordeals given by Yāj,. Kośa is recommended for an offence below 1000 Paṇas, and the remaining four, above it. Obviously, this can be taken as a line of demarkation between the oaths and the ordeals in general, since, Kośa is, in fact, an oath deemed to be an ordeal.

We have seen above that Viṣṇu has only graded various oaths according to their respective value. He has however not indicated similar grades of the ordeals. Yāj. has also practically done the same. He has only distinguished Kośa from others, but has not indicated the respective value of each of the ordeal given by him.

In this respect, Nār also does not go beyond Yāj. On the contrary, it appears that he has avoided to discuss this aspect of the ordeal. Selection of an ordeal according to him must be made on the basis of the strength of place and time. (Deśakālabalapekṣam—we have already referred to the variant reading—Arthakalabalapekṣam. It may be observed that Deśakala-appears to be the original reading for the following reasons—Nār. does not really discuss the Artha aspect of the ordeal. Asahāya, the commentator of Nārada Smṛti, accepts that reading). The Artha aspect appears to have got prominence in the later Smṛtis. We find that Kāt and Bṛ have particularly stressed this aspect.

KĀTYĀYANA

All sort of money should be converted into gold. Suitable ordeal should be tried only after valuing the offence in terms of gold. Viṣa should be tried for the loss of 100 (Suvarṇas), Agni for 80, Jala for 60, Dhaṭa for 40, Kośa for 30 (or 20 or 10 or for more than half of it i.e. 6), Taṇḍula for ¼th of it. (i.e. 1½ Suvarṇa), methods like touching the head of son etc. for ¼th of it (i.e. for a half Suvarṇa less by part of it i.e. approx. 30 Kṛṣṇalas) and other popular methods for ¼th of it. (i.e. Seven and a half Kṛṣṇalas).

BṚHASPATI

A king, with a desire to know the truth or the falsehood, should give ordeals as per recommended procedure in accordance with the seriousness of the offence.

Viṣa should be tried for the loss of 1000 (Paṇas), Agni for the amount less by ¼th of it (i.e. 750 paṇas), Jala for the amount less by the third part of it (i.e. 670), Dhaṭa for half of it (500), Taptamāṣa for 400, Taṇḍula for 300, Kośa for 150, Dharmadharmau for 100, and Phala for a Gocora.

These are the recommendations for an inferior type of person. The amount may be double or made four times in the cases of the persons of middle or higher categories.

PITĀMAHA

Pit. who is otherwise very elaborate in his discussion on ordeals, gives one single stanza for the gradation of the ordeal, probably indicating less importance of such a consideration. The grades mentioned by him are: Dhaṭa for 1000 Paṇas, Agni for half of it (i.e. 500 paṇas), Jala for quarter of it (250 paṇas) and Poison for half of it 125 Paṇas).

PADMAPURĀṆA

All wealth, valued on par with the movable or the immovable property involved in the litigation, should be converted into gold and proper ordeal should be tried accordingly.

The commentators and the digest-writers have developed the various points arising from the details given by the Smṛtikaras. These are :—

(i) Valuation of an offence in some standard (and uniform) measure.

(ii) Proper gradation of various methods.

(iii) Reconciliation of the various statements of the Smṛtikaras.

In ancient India, money was calculated in various forms. We find different currencies popular at different times, in different parts of the country. It was necessary to decide the uniform value of different currencies, particularly for awarding punishments, otherwise convicts at different places might be asked to pay higher or lower fine even for similar offences.

Manu and other Smṛtikaras have, therefore, given three standard currencies—in Gold, in Silver and in Copper.

In the case of an ordeal, as also for the payment of fine, the standard currency recommended by Manu was to be accepted. The later writers prescribed this as a general rule. But this was not sufficient to solve the difficulty, because the details given by the these Smṛtikaras are confusing, A Pala, for example, is equal to 4 Suvarṇas according to some, while according to others, it is equal to 5 Suvarṇas. A Karṣa is available in all the three currencies (i.e. Suvarṇakarṣa, Rajatakarṣa and the Tāmrakarṣa) and so on.

Mit., therefore, points out that in the stanza 'Nāsahasrāt' etc. one must take Tamrika Paṇa (i.e. Kārṣāpaṇa), while digests like SC, VN etc, explain that it is not possible to adhere to the measures given by Manu. These digests plead for the currencies popular in their times and rather give complete tables converting the values recommended by the Smṛtikaras into the currencies recommended by them.

The SC points out that all measures must be converted into Vyāvahārika Niṣka. This can be concluded on the following grounds: The general rule is that in case of an ordeal, the measures given by Manu must be followed, but this is practically not possible because Manu's measures indicate a much higher value. For example, in stanzas like 'Niṣke to Satyavacanam', if we take Manu's Niṣka, we must remember that Manu's Niṣka is Rajatapalatmaka (i.e. to be calculated in the silver currency) and it values more than half

the golden Karṣa. Now, if this oath of Satyavacana is to be conducted to a Brahmin, the value of the offence must be four times larger (i.e. equal to 4 Niṣkas). That is of course a very big amount as against the milder form i.e. an oath of Satyavacana. We must, therefore, resort to the Vyāvahārika Niṣka which is much reasonable. All the measures, either in Kṛṣṇalas (given by Viṣṇu), in Kārṣāpaṇas (given by Bṛhaspati) or in Suvarṇas (given by Kātyāyana), could be conveniently converted into Vyāvahārika Niṣka with the following table:

1 Vyāvahārika Niṣka	=	80 kārsāpaṇas
or	=	20 Kṛṣṇalas
or	=	¼ Suvarṇa.

SC gives a complete table converting the Suvarṇa values of ordeals given by Kāt. into the Vyāvahārika Niṣka by supplementing it with more details i.e. by giving further divisions of the methods given by the Smṛtikāra or by adding other methods to them e.g. the digest divides Kośa into two—Alpābhiyogavihita and Mahābhiyogavihita; Dharmaja into three i.e. for Uttama, Madhyama and Nikṛṣṭa, while it adds the methods like those of puṣpa, touching the feet of Brachmins, Iṣṭāpūrtadrādāna and Jatiśapathas. Complete table given by SC is produced here, with asterisk mark on the methods originally referred by Kāt.

*(1) Viṣa for 400 Niṣkas.

*(2) Agni for 320 Niṣkas.

*(3) Jala for 240 Niṣkas.

*(4) Dhaṭa for 160 Niṣkas.

*(5) (Mahabhiyoga) Kośa for 120 Niṣkas.
The same Kośa can be tried for 80, 40 or 24 Niṣkas.

*(6) Taṇḍula for 6 Niṣas

(7) Dharmaja for 5 Niṣkas (for Uttama)

(8) (Alpābhiyoga) Kośa for 3 Niṣas.

(9) Puṣpa—for little less than 3 Niṣkas.

(10) Dharmaja (for Madhyama)–2½ Niṣkas.

(11) Touching the feet of Brahmin, Father and the Image of god........for 2 Niṣkas.

*(12) Touching the head of son and wife for 1½ Niṣkas (30 Kṛṣṇlas)

(13) Dharmaja (for Nikṛṣṭa) for more than 1½ Niṣkas.

(14) Methods like Iṣṭapūrta etc. for 1 Niṣka.

*(15) Laukika Sapathas for 0.4 Niṣkas (7½ Kṛṣṇalas)

(16) Jātiśapathas—20th part of a Niṣka.

The recommendations given by Kāt. should be taken as referring to the cases of Apahnava, while those given by Bṛ. to the cases of Apahāra, the digest points out. Bṛ. has given the values of the offences in Kārṣāpaṇa and with references to the Uttama, Madhyama and Adhama types of persons. Values in Karṣapaṇa given by Bṛ. can be transferred to the Vyāvahārika Niṣka on next page:—

Other points referred to by SC are as follows:—

(1) In all civil cases, offences valuing more than 500 Paṇas are supposed to be the serious offences and those less than 500 Paṇas are the light offences. All the cases referred to here in this table are the civil cases, seriousness of which can be valued on the basis of the money involved.

(ii) The seriousness of the criminal cases could be decided on the basis of the punishment or the Prayaśacitta a person might be require to undergo.

(iii) Values given by Yaj. in Nasaharat etc. should be taken as referring to the persons of the middle category (Madhyama), because in the case of the person of a lower category, an offence valuing less than 1000 (Paṇas) will be treated as a serious offence while in the case of the person of a higher category, the offence valued less than 2000 Paṇas will be treated as a light offence.

(iv) Pit.'s stanza (Sahasre tu etc.) should be taken as referring to the persons that are the repeaters of the offences. Thus, even if he is an Uttama person, he will have to undergo Dhaṭa for the offence valued to be four times less than 1000 (Paṇas).

(v) No writer has given the values of the offences for the oaths like Satya, Puṣpa etc., but these should be adjusted with the arrangement (given by Kāt. or even by Viṣṇu) for the cases of Apahnava.

VN has following elaborate discussion in this respect.

"We find that writers like Bṛ. give the values of various ordeals in thousands while others like Kāt. give them in hundreds. We may find these statements incongruent. If, however, we have to reconcile these statements, we must accept the details of Bṛ. as per convention (Nyāya) that whichever is larger or bigger must be accepted.

A general rule in this respect, however, is :—whenever we find any number mentioned without any specific form of measure, we must take it as pertaining to the Paṇas, since people popularly commerce in that currency.

But as regards to Paṇas also, we have four different opinions. (i) The (Suvarṇa) Paṇa explained by the Vaiyākaraṇas as that equal to 4 Kākiṇis, (ii) The Karṣapaṇa made of copper, (iii) The Daśamanātmaka Paṇa wherein 1 Māna = 1 Taṇḍula, and 10 Manas (or Taṇḍulas) = 1 Paṇa, and (iv) Paṇa calculated in Māṣas i.e. 1 Paṇa = 20 Māṣas.

Out of these 4 types of Paṇas, fourth type is straightway rejected by the rule that the Paṇa of 20 Māṣas is recommended for all purposes except ordeals. Similarly, the second

variety also gets itself dropped since writers like Viṣṇu and Kāt. have clearly pointed out that value of an offence must be measured in gold. We have thus only two options i.e. the Vaiyākaraṇa Paṇa and the Daśamānātmaka Paṇa. Here, we can have following arrangement :—When the number is given in thousands we must take the first Paṇa (which is equivalent to 4 Kākiṇis) and when it is in hundreds we should take it in the Dśamānātmake Paṇa.

Now, if we calculate the details given by Nār., Kāt and others in the chapters of punishment, we find that the first Paṇa is equal to 16 Mānas (i.e. it is Ṣoḍaśamānātmaka). It is as follows:—

(a)	1 Māṣa	=	8 Kākiṇis.
	1 Māna (Taṇḍula)	=	8 Kākiṇis.
∴	1 Māṣa	=	1 Māna.
(b)	1 Mahiṣi	=	8 Maṣas.
	1 Mahiṣi	=	2 quarters of a Paṇa.
	8 Māṣas	=	2 quarters of a Paṇa.
∴	1 Paṇa = 16 Māṣas = 16 Mānas.		

If the accused is full of merits, we must calculate the number given by the Smṛtikāra in the Ṣoḍaśamānātmaka Paṇa, if the person is without merits we should find the number in the Daśamānātmaka Paṇa. We can thus give the following table indicating the value of an offence in the Daśamānātmaka Paṇa.

I—(a)	10 to 15 Paṇas	—Dharmaja for a Śūdra, but Phāla for a Kṛsivala.
	15 to 30 Paṇas	—Kośa for a Śūdra.
	30 to 40 Paṇas	—Taṇḍula for a Śūdra.
	40 to 50 Paṇas	—Taptamaṣa for a Śūdra.
	50 to 67 Paṇas	—Tula for a Śūdra.
	67 to 75 Paṇas	—Jala for a Śūdra.
	75 to 100 Paṇas	—Agni for a Śūdra.
	100 and above	—Viṣa for a Śūdra.

(b) All these values aṛe given with reference to a Sudra. In the cases of Vaiśya, Kṣatriya and Brāhmaṇa, the respective amount must be doubled, trebled or made four times as per recommendations of Viṣṇu.

Bṛ. gives three categories of the persons undergoing the trials. These are (i) Lowest (Nikṛṣṭa), (ii) Middle (Madhyama) and (iii) Highest (Uttama). For the persons of the Middle and the Highest categories, the respective amount must be doubled or made four times. This, however, presupposes a category in between the Middle and the Highest, where the respective amount should be made three times.

Now, a Śūdra would include all the persons coming under Śūdra class (Sadharmāṇah) and others born of lower castes. Similarly, many of the Brahmins are treated as Śūdra on the basis of the statement of Kāt.

II—(a) Viṣṇu has given various Sapathas valued in terms of Kṛṣṇalas. There is no uniformity as regards to the value of a Kṛṣṇala. A Kṛṣṇala of Yāj. and Manu amounts to 7 Māṣas less by 2 Kākiṇis (i.e. 26 Kākiṇis) while that of Viṣṇu is of 6 Māṣas less by 3 Kakiṇis (i.e. 21 Kākiṇis). We must obviously follow Viṣṇu's Sapathas in the Kṛṣṇala recommended by him. These are Dūrvakara for 1 Kṛṣṇala, Tilakara for 2, Rajatakara for 3, Suvarṇakar for 4, Sirodhṛtamahikara for 5, Kośa for half a Suvarṇa and so on.

(b) Viṣṇu has not given various śapathas such as touching the head of son or wife mentioned by Manu and others. These should be adjusted between Siroddhṛtamahikara and the Kośa mentioned by him".

According to SV, the numbers in thousands given by Bṛ. belong to the Taṇḍulatulitamānasuvarṇa (=Manas) which can be converted into Paṇas by dividing those figures by ten. The Digest has accordingly, given a table of conversion of the Bṛ.'s numbers into (Daśamānātmaka) Paṇas.

SV has advocated the same arguments as given by VN and has established that the incongruence between the two sets of figures i.e. given in hundreds and those in thousands can be removed by resorting to the Paṇas which can be of two types i.e. Ṣoḍaśamanatmaka out of which, the former is meant for the accused person with merit while the latter for one without merits.

SV has strongly rejected the plea made by the SC that, all these figures should be converted into the Vyāvahārika Niṣka, on the ground that it cannot be supported by the Smṛti texts, and secondly, that we can very well co-relate these various numbers and remove the incongruence by resorting to Paṇas which are already recommended by the Sāstrakāras (Vide SV pp. 172-182).

An interesting point notable in this whole discussion concerning the seriousness of an offence is that, though there is a difference of opinion amongst the writers as regards to the value for and the currency in which the seriousness of an offence should be calculated, the order of the ordeal as such given by these writers is uniformly the same. Thus every writer recommends Viṣa for the serious most offence, then comes Agni, then Jala, then Tula and so on.

It appears that this aspect of ordeal is gradually getting lesser importance. We find that digests like Madanaratnapradipa, Nṛsiṁhaprasāda, Divyatattva and Vyavahāraprakās'a have rather discussed this topic of grading the ordeal in relation with the value of the offence with reservation and have satisfied themselves only by collecting the traditional information or by merely quoting the stanzas of Kāt. and Bṛ., while digests like Vyavahāramayūkha have preferred to pass over the discussion. These works thus appear attaching lesser importance to this topic.

We can give following reasons for such a development.

(i) In course of time, we find an overall change in the general positions of these ordeals. Viṣa and Jala, the important ordeals of the Dh. system start going into background and Taptamāṣa, comparatively an inferior ordeal, attains importance. The order of the ordeal (from the point of view of the seriousness of the offence) given by Dh. writers does not agree with the one given by Alberuni. Alberuni, who describes these methods in their succeeding higher positions, gives following order. Oaths, Viṣa, Jala, Kośa, Tula, Taptamāṣa and Agni (Vide Chapter VII).

(ii) Dh. writers recommended particular method for a particular kind of dispute. The result was that a specific ordeal was fixed for a specific offence. Taṇḍula and Taptamāṣa were particularly recommended for the cases of theft and they came to be reserved for the offences of theft. These rules limited the scope of deciding an ordeal on the basis of the seriousness of the offence.

(iii) Rules regarding the physical ability of the person undergoing the trial and those concerning with the suitability of the season also limited the scope of such a Consideration.

(iv) All the methods described in Dharmaśastra were gradually made milder. Not a single test was allowed to be dreadful or risky for human life. Grading of these ordeals as serious or safe, therefore, gradually became less important.

(v) According to the Dh. rules, ordeal was always employed with the mutual consent of the parties concerned. It was never forced on anybody and was to be undergone willingly. As a result of this provision we find that the person was given freedom to select the method of his choice. (Vide: The case of Kṛṣṇaji Bin Bapuji Boḍka Vs. Somaji Bin Ba puji Boḍka given in chapter VII).

(vi) Popularity of these methods varied individually from time to time. The popular method of the day was in more demand.

(B) Consideration of ordeal from the point of view of the time or the suitability of the season:

The earlier writers like Gautama, Apastaṁba, Saṅkha and Likhita and Manu have not discussed or given the rules for the time or the season for conducting an ordeal. The discussion, as it appears, is first taken up by Viṣṇu. While discussing the proper time for the ordeal, the Dh. writers have mainly discussed D9.

'Ṛtuto Divyavyavasthā' i.e. the favourableness of the season'. They have also discussed the time i.e. the part of the day or the actual moment when the ordeal should be conducted. We shall discuss here these rules in due order.

VIṢṆU

Tulā must not be conducted when there is wind. Agni should not be conducted in the Sarad and Griṣma. Jala must not be conducted in Hemanta and Siśira. Viṣa should not be given in the rainy season.

It is interesting to note that Yāj. who has standardized the ordeals in general and has discussed all the important aspects of the ordeals has, however, not discussed the favourableness of the season for these ordeals. Amongst later Smṛtikaras we find that almost every Smṛtikara stresses the importance of conducting the ordeal at a proper time and proper place. If this is not observed the ordeal may fail in its purpose, they point out. Amongst these writers Nār., Kāt., Bṛ. and Pit. are important. We, however, find that Nar. discusses both the aspects—the time and place of conducting ordeals—without any discrimination, Bṛ. is silent on both, Kat. discusses the place of conducting the ordeals and Pit. elucidates the rules regarding the time of ordeal. We thus find Viṣṇu, Nār., and Pit. as the main writers discussing the time of conducting an ordeal.

NĀRADA

Nār. says that, fire ordeal is recommended in the Varṣā, the balance in the Siśira, the water in Griṣma and the Poison in the cold season. The water ordeal should not be tried in the cold season, nor fire in the heat, the Poison in the rains and the Balance in the wind.

PITĀMAHA

Pit. points out that the Caitra, Mārgaśirṣa and Vaiśakha are undisputedly common months for all the ordeals in general. The Balance is meant for all seasons but it must be avoided when the wind is blowing. The Fire is recommended in the Siśira, Hemanta and Varṣa, the water is Sarad and Griṣma, Viṣa in Hemanta and Siśtra.

Season	*VIṢṆU*	*NĀRADA*	*PITĀMAHA*
VASANTA (Phālguna-Caitra)	—	—	—
GRIṢMA (Vaiśakha-Jyeṣṭha)	No Agni	Water Recommended	Water recommended
VARṢA (Āṣadha-Sravaṇa)	No Poison	Agni recommended	Agni recommended.
SARAD (Bhadrapada-Aśvin)	No Agni	—	Water recommended.
HEMENTA (Kārtika-Mārgaśirṣa)	No water	—	Agni recommended. Poison recommended.
SISIRA (Pauṣa-Magha)	No water	Dhata recommended	Agni recommended. Poison recommended
GENERAL REMARKS	No Tulā when wind blows	No water in Cold season, Agni in hot season, Balance when the wind blows.	(1) Caitra, Mārgasirṣa Vaiśākha common months for all ordeals. (2) Kośa, Tula in all seasons.

If we examine the rules regarding the favourableness of the season for conducting the ordeal, we find that all restrictions of seasons for the application of an ordeal, unless they are vitally connected with the working of the trial, are gradually relaxed. On the whole, we thus find a tendency of the Dh. writers to make ordeals freely available so that they could be used to their maximum advanage.

Amongst the five ordeais also, the Kośa and Tulā are recommended in all the seasons. We find that Tulā is not allowed when the wind is blowing. This is quite obvious, because the result (the success or the failure) in this method depends upon the movement of the scales. It is not possible to decide correctly the position of the scales if they are constantly moving due to the wind. Save this condition, we find that Tulā and Kośa are recommended for all the seasons.

We have observed above that the ordeals added later on are not discussed from the season point of view. Mit. DT, SV clearly point out that since no specific rules are given for these ordeals, they should be taken as available in all the sessons, while SC explains that the Kośa (the last of the five ordeals) should include the other ordeals. Consideration of season is thus really meant for three ordeals i.e. Agni, Jala and Viṣu. Here also we find a tendency of lessening the restrictions and making them as available as possible.

A simple observation of the table, given above, will reveal to us a gradual change in the view-point of the writers. Viṣṇu has positively denied the use of three ordeals in respective seasons. Nārada and Pit. do not speak of such denials. They recommend a particular ordeal for a particular season.

We find that the Viṣṇu has denied the use of Agni and Jala for two seasons each and that of poison for one season only. Nar. denies Agni in hot weather and water in cold. He does not restrict the use of Agni and water in any particular season. Consideration of weather in the cases of these ordeals was perhaps more important to him than restricting them in a particular season. It will appear that Pit. also like Nār., has thought of these ordeals from the recommendation—(and not the denial)–point of view. He does not deny these ordeals in any season as such. He, on the contrary, points out in general three months which could be used for any ordeal without any restriction.

The Poison ordeal is denied only in the rainy season, and therefore, it is available in all other seasons. This restriction is also gradually removed. Nār. has made a general recommendation for its use in cold weather. He denies it in the rainy season no doubt, but this denial is not very strict because he himself recommends the use of a specific quantity of poison in the rainy season. Digests like DT, therefore, decleare that the denial of the Poison in the rainy season relates only with the Poison of higher quantity. Pit. points out that the Poison flares up in the rainy season. Save this difficulty, he has no objection in using it in the rainy season.

Thus we find that the season consideration of the ordeal is shifted to the suitability of

the weather and except that the fire and water ordeals are avoided in extremely hot or extremely cold weather, there is a tendency of making all the ordeals available in all the seasons.

With reference to the time of conducting ordeal, Viṣṇu and Yaj. point out in general that the ordeals must be conducted at the Sunrise. According to SC it only means that the ordeals must be conducted in the former part of the day, while VN observes that unless otherwise recommended, the ordeals must be conducted in the former part of the day.

Pit. in this connection points out that the Fire, Balance and Kos'a must be conducted in the former part of the day, Water in the mid-day and Poison in the latter part of the night.

Commenting upon the Yāj. stanza, the Mit. points out that the sun-rise is the general time recommended for the ordeal, but we must follow the path of Siṣtas according to whom ordeals are conducted (at sunrise) on Sundays only. Other writers also point out that the ordeals should be conducted on Sunday. According to Prajāpati, however, all ordeals must be conducted in the former part of the day on any Tuesday or sunday. According to the stanzas quoted by DT, VP etc. ordeals are not conducted on Tuesdays and Saturdays.

According to Viramitrodaya, the ordeal must be conducted on the auspicious day of the Bright fortnight.

DT quotes stanzas from a work on Astrology, according to which a person desirous of being victorious in an ordeal should not undergo it—(a) when the Sun is (i) in the Simha or Makara zodiacs (ii) in conjunction with the Jupiter or (iii) in the setting position, as well as (b) in the intercalary month, (Adhika Masa).

The wise persons would advise ordeal when the Sun and Jupiter are in their purest positions (i.e. they should not be in undersirable conjunction or under the ill-effects of any other planet, nor should they be in their weakest positions such as 4th, 8th or 12th house): The wise persons would not recommend it when the Sukra is setting. An ordeal or an expiation should not be undertaken on 8th or 14th day of the fortnight. Similarly, an ordeal or a marriage ceremony should not be performed on Tuesdays and Saturdays.

The digest also quotes stanzas from Dipakalika which gives exhaustive details of the planetary positions in which ordeal is either encouraged or rejected. These can be summarised as follows:—

The ordeal is not advised: (i) when the Sukra is setting (ii) the Sun is in the 8th house. (iii) when the Sun the Jupiter are in conjuction with each other. (iv) in the birth-month of the person to be tried. (v) when the moon is in 8th from the Janmanakṣatra. (vi) in the month of Bhādrapada. (vii) in an intercalary month. (viii) if the Janmanakṣatra falls on that day.

The ordeal is recommended (a) when the Sun, Jupiter and Moon are in their purest position (i.e. they should not be in the 4th, 8th or 12th house). (b) when the 'Cara' planets

are in the 2nd and Ist house (Dhanasthāna and Tanusthāna) (i.e. when Guru, Sukra and Buddha are rising and the 'Lagna' is belonging to the Tula, Meṣa, Karka and Makar zodiacs), (c) any auspicious moment.

Ordeals were conducted on auspicious moments decided as per astrological calculations, during the Maratha period. If the ordeal could not be performed on the day and time fixed, a fresh Muhūrta was calculated for the purpose.

Mit. points out that the various aspects that are to be considered for selecting a particular ordeal such as the caste and eligibility of the person, seriousness of the offence, suitability of time etc. should be considered conjointly and not in isolation e.g. (a) Tula is recommended for woman but it is not so that a woman must always be tried with the Tulā only, since other methods like Kośa, Agni etc. can be available for her. Obviously, we have to see the rules of season and the seriousness of the offence before deciding the ordeal. (b) Similarly, Brahmins are also not always to be tried by Balance only, since other ordeals could be available to them. (c) It has been pointed out that Agni should not be tried on a leper, Water on a person suffering from asthema or Poison for a person suffering from Bile or Phlegma. Now, even if the caste of the person or the season recommended be suitable, these ordeals cannot be tried on these persons on health grounds.

(C) Consideration of an ordeal from the point of view of the place of conducting the trial:

We shall discuss here the rules regarding the place of conducting the ordeal.

Gautama says that a Sapatha must be conducted in the assembly of gods, in the assembly of brahmins or in the royal assembly. Explaining this Sūtra, Maskarin gives following points :—

(i) The word Deva here means the idols of the gods or gods like Sun.

(ii) This rule regarding the place relates with the oaths to be used in legal dispute (Vyavahāre) and is not meant for the popular oaths (Laukika) which can be conducted anywhere.

(iii) The order of places referred to in the Sūtra is not important. Anyone of them is, thus, selected when the other one is not available, and is generally preferred in the order given by us above. The non-availability of the place must be viewed from the point of view of its being engaged in some other suit.

(iv) In fact, the Sūtrakara should have said 'in the presence of gods etc.' (Samakṣam) instead of in the assembly of gods etc. (Samsadi), but it only means that the place selected must be (a constituted assembly—Saṁsad) in the vicinity of gods, because the constituted assembly or Sabhā (has its rules of procedure and therefore) is free from frauds.

Gautama-mitakṣara points out that the assembly of gods means a place of live or stern

deity (Ugradevatā). The commentary further points out that the place for an oath must be selected in the cases of Kṣatriya etc. on the basis of the seriousness of the offences—vicinity of gods must be the place for the serious offences, while cases of trifling matter could be tried at any other place.

Āpastamba, saṅkha and Manu have not given any details as regards to the place of conducting the ordeals.

Viṣṇu is general, recommends the 'Vicinity of gods or Brahmins' as the place for conducting these trials. Yāj. also gives a similar stanza which reads Nṛpa instead of Deva, recommending the vicinity of the King or Brahmins as the places of the trial.

The variant reading speaks of a very important change in the history of ordeals. The ordeals are gradually taken over by the king. It thus becomes a sole responsibility of the king's office to conduct ordeals properly. As a result, conducting of ordeal becomes more elaborate, technical and a matter of public concern. Viśvarūpa in this connection makes an important interesting statement. He says that the recommendation of the vicinity of the king is meant for bringing serenity to the trial. .

We have already seen that Nār. has stressed the importance of the proper place for conducting a trial. The ordeal must be conducted publicly. Kāt. point out that a trial conducted outside the village or at a lonely place fails in achieving its purpose, which according to the digests like SC, SV etc. means that the ordeal must be conducted in the presence of many persons. We find that in all such trials, the respected persons of the society were to act as witnesses.

Selection of the proper place, according to Kāt. must be made in accordance with the kind of the offence for which or the type of the person for whom the trial is undertaken. He thus says that a person who is charged of having committed sin (Abhiśasta) and all the great sinners in general must be tried at Indrasthāna, the person charged of treason (Rājadroha) must be tried at the Royal gate, the person born of the parents who have married according to the Pratiloma form of marriage must be tried on the cross-roads and in all other cases, the ordeal must be executed in the Sabhā.

The word Indrasthāna is variously explained. (i) According to DT; VP etc. it means the place where a pillar is erected in the honour of Indra. (ii) According to SV it may be taken for any famous temple. (iii) Bālambhaṭṭi explains that (a) According to some it should be a temple of Indra where the idol of Indra is erected or (b) Indradhvajayuthasthana according to Kalpataru (c) the temple of the highest deity according to us.

Prajāpati gives the vicinity of Caṇḍika and Rudra as the proper places for conducting the ordeals.

Thus if we summarise the details available regarding the place of ordeal, we can analyse them in the following heads :—

(i) The Vicinity of the Gods: This is extended to (a) Indrasthāna (b) any temple (c) the most famous temple of the town (d) the temple of the highest deity (e) the

temples of Caṇḍikā and Rudra (Lord Siva).

(ii) The Royal gates or the Sabhā.

(iii) Cross-roads and other public places.

These heads reveal some of the aspects of the ordeals in general.

(i) The ordeals expect divine intervention in executing justice. The whole procedure more or less tends to be a religious ceremony. The vicinity of god or the temple is, therefore, supposed to be the most befitting place for conducting a trial.

(ii) The ordeals which were voluntary, were getting more legal and technical and the king's and the court's influence on such trials, 'was gradually increasing day by day. Hence the importance of the places like the Royal gate or the Sabha

(iii) A natural corollary to this, is the expectation that the ordeals must be executed publicly. Hence, the recommendation of the cross-roads.

It must be pointed out that the details regarding the place of ordeal discussed here are in general, while the places recommended for any of the ordeals in particular are discussed separately. (Vide discussion of the various ordeals in Chapter V).

We may, however, note the following common points :—

(i) The site selected for the trial is made clean and pure by plastering it with cowdung and by consecrating it with various religious rites.

(ii) When the trial is conducted in a temple before the image of the god, the person undergoing the trial performs all the activities facing the god.

(iii) In all other cases, all the activities are performed by him facing east or north e.g. in the Balance ordeal he should sit in the scale facing east, in the Fire ordeal, we find that nine circles are drawn from west to east. The person crosses them with the red-hot iron ball in hand from the westernmost circle to the eastern one, the site selected for the water ordeal must be on the western bank of the reservoir so that the person undergoing it can perform all rites facing east and so on.

It is rather interesting to note that the details regarding the place of ordeal are faithfully followed by the people through all the ages. Kośa, as pointed out by Alberuni, was conducted in the most venerable temple of the town. We get many examples of ordeals recorded in the historical documents of the Maratha rulers. It becomes clear from these documents that the parties concerned were required to go to the places known for ordeals. A complete list of such places known for the ordeals is produced in chapter VII. Most of these places are the temples of lord Siva—tallying with the recommendation of Prajāpati. We have already observed that the ordeals were conducted under the supervision of the royal office. Muslim rulers did not object to this Hindu method of judicial investigation. Their influence on the method was however obvious. It is interesting to note that the 'vicinity of gods' recommended by the Dh. writers is extended to the holy Muslim places also. Jumma Masjid is one of the places known for the ordeals given in the

list.

The recommendations of the Dh. writers have gone down to the various tribes of India. We have seen that Kāt. has recommended Indrasthāna as one of the places. It is interesting to note that a person accused of adultery in Travancore was permitted to submit to the ordeal of dipping hand in boiling ghee at the temple of Sacindram. (This temple derives its name for Indra, who according to the legend had illicit intercourse with Ahalyā, the wife of Gautama Ṛṣi and had to undergo this form of ordeal). In Malbar, if any Brahmin was suspected of theft or co-habitation with a woman of low caste, he was sent for a trial by an ordeal to the agoda Sujjindra. (Sacindram). If a Nair was in like manner suspected, he had to submit to the ordeal in the fort of Balipatnam. If a Bhil is suspected of any crime such as theft or adultery, he is brought before Panch. From these various examples we are able to conclude that the Dh. details were very faithfully followed by the people and were brought down by tradition quite upto the modern times.

(4) The cases for which the ordeals are recommended:

The sole aim of the judicial proceeding is to investigate the truth and dispense justice. The dispensers of justice, therefore, have to take into account any factor that may help the investigation and resort to any means that would lead them to establish the truth. A legal dispute should ideally be settled by means of witnesses, says Gautama, but the truth may be established even by means of oaths, he points out. Apastamba declares that if the human means are not sufficient and the doubt persists, other circumstantial evidence or the divine method of testing the accused person may be utilised.

Before we go into the details regarding the cases for which the ordeals could be used, it will be proper for us to take a general review of the kind of disputes or the titles of the law discussed by the Dh. writers.

We must firstly know what is a crime or an offence. A crime may be defined as an act or omission that breaks the law and is subject to punishment. But all kinds of breaches of law are not crimes but only those which are deemed to be menaces to the conditions of the existence of society, while others may be termed as wrongs.

The titles of the law are the various sorts of offences, in which the aggrieved persons can go the court of law to seek justice which can be dispensed to them after proper legal investigations. All such cases would be opened only after a regular plaint from the plaintiff.

But there are certain offences of which a king can take cognizance on his own motion. These are discussed by the Dh. writers under the heads of Aparādhas, Padas and Chalas which are respectively 10, 22 and 50 in number: the ten Aparādhas, according to Nār are: disobedience of king's order, murder of a woman, confusion of Varnas, adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assult and abortion. They were called Aparadhas because they were the cognizable offences punishable under

the act. The 22 Padas were ripping open an animal's body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure-trove, grazing cattle over the field of another, destruction of public garden, poisoning, high treason, unauthorised breaking of royal seal, divulging the secret line of kings policy, relesing from jail a prisoner, appropriation of taxes or fines to be levied to the king and so on. The fifty Chalas are mostly the breaches of etiquette before the eyes or in the presence of the king.

The Dh. writers have divided various types of disputes into 18 titles of law. These are mainly divided into two-the civil Dhanamula) and the criminal (Himsāmūla).

Discussing the evidential value of the ordeals, we have seen that the Dh. writers have repeatedly stressed the need for using a powerful proof and have pointed out that the ordeals should never be given preference to the human proofs. Ordeals could be used only in the absence of the human proofs i.e, when they are either not available or not sufficient to throw light on the dispute under investigation.

These are, generally, the criminal cases in which, attempts are often-times made to destroy every sort of evidence. These are the cases such as adultery, theft, heinous action or plotting against the king. A king is advised to make a very free use of ordeal in all such cases. It could, however, be used with advantage in the civil cases also.

Nār. therefore points out that the crimes of confused nature such as those taking place in forests, in a lonely place, at night, in the interiors of the house and the cases of concealing deposits or of heinous actions should be tried with ordeals. He further points out that ordeals are recommended in the cases of the doubtful character of woman, thefts and heinous actions, or in all cases of the denial of monetary liability.

Kāt. observes that the cases which could be decided by human proofs must not be tried with the divine proofs and vice-versa i.e. the cases which are to be decided by the divine proofs should not be investigated by human proofs. The cases which are particularly recommended for the trial by an ordeal are (i) all heinous crimes of very grave nature, (ii) the charges of assault and abuse or defamation, (iii) matters arising from the use of force, (iv) persons committing acts under concealed identity (i.e. by wearing masks etc.), (v) all kinds of highly sophisticated crimes, (vi) cases concerned with the life and death of the person.

Accroding to Bṛ. ordeal should not be used in the cases of abuse or defamation or of immovable property, while it could be tried with good efforts in all the four kinds of heinous actions. It must be used for the treason and heinous acts. The offenders such as the forgers of gems, corals, or pearls, one withholding deposits, a murderer, an adulterer must invariably be tried by means of ordeals. In all charges of great sins or misappropriation of deposits, the king should try the cases by ordeals, eventhough there might be witnesses.

According to Kāt. and Pit., all disputes regarding the immovable property should not be tried with ordeals.

If we analyse these details, we find tat the ordeals are principally used for the criminal

cases. Bṛ. and Pit. have denied its use in the cases of immovable property or the cases dealing with land, while Kāt. gives other civil cases also in which the ordeal is denied. But, as the commentators point out, this should not be taken as a very strict denial. These are the cases in which, human proofs i.e. witnesses, documents or possession are generally available and the ordeal therefore, naturally, becomes inapplicable. But if the human proofs are not available in such cases ordeal can be used without any reservation. Kāt. has in fact clearly pointed out that the gravity of charges in all such cases should be valued in terms of gold and a proper ordeal should, accordingly, be tried for it. Kāt. and Bṛ. have given tables showing the values of the offences of Apahnava (denying monetary liability) and Apahāra (doing away with money) for which a particular ordeal could be applied. We find, in the Maratha records, a number of civil cases of various nature being tried by ordeals. Boundary disputes were particularly tried by ordeals.

We shall discuss here the cases that are particularly recommended for trial by an ordeal.

(i) *Sandighe'rthe*: In the cases of doubt i.e. when the human proofs are not available or if available, they are not sufficient. The NMS Bhāṣya explains it as the cases of theft as well as those regarding the persons who are facing false charges.

(ii) *Nṛpadrohe*: In the cases of treason. This has been explained by Aparārka as (a) attempt to kill the king, (b) smuggling the royal money or women, (c) allying with the enemy, (d) leaking out the secret policies of the king. It must be observed that all these offences come under the 10 Aparādhas or 22 Padas and are supposed to be very grave. King is asked to make a very free use of ordeal in all these cases.

(iii) *Abhiśāpe*: The cases of grave charges. It is explained by SC as uttering a sinful speech which is a kind of Pāruṣya (i.e. the cases of abuse and defamation). According to the SV it may mean threatening to kill, while Aparārka explains it as killing a Brahmin.

(iv) *Mahāpāpābhiyage*: See under Mahābhiyoge. The Vivādacandra observes that the ordeal should be employed particularly in the case of Mahāpātakas, (even if there be proper witnesses) just to establish the higher innocence of the person.

(v) *Mahābhiyoge*: It has been explained, in general by Mit. as the cases valued for more than 1000 Paṇas. (according to SC, for more than 500 Paṇas) while Aparārka and Viśvarūpa take it in a broader sense i.e. the cases valuing more than 1000 Paṇas as well as the cases of grave sins.

It will thus appear that Mit. essentially takes Mahābhiyoga as all civil disputes of graves nature, while Aparārka includes Mahāpātakas also, (which normally do not come under civil or criminal law, though many of them happen to be cognizable offences included under 10 Aparadhas given above and could be classified under criminal offences of theft, adultery and heinous acts.). The Maha

patakas have, however, a distinct aspect other than the legal one i.e. the sin committed is to be washed by various expiations. Ordeal can be resorted in the cases of such guilts obviously for self-purification.

(vi) *Steye*: Theft means depriving a man of his wealth clandestinely or openly. It is of three kinds according to the value of the thing stolen i.e. trifling, middling and grave. It appears that ordeals were particularly recommended to detect the cases of theft. NMS Bhāṣya's explanation of the word Sandighe'rthe given above makes it clear that the cases of theft were principally delt with the ordeals. We find that Taṇḍula and Taptamāṣa are the two ordeals praticularly recommended for the cases of theft. It will be clear from the tribal account collected in the Appendix I, that most of the Indian tribes employ ordeals for the detection of theft and adultery. It is interesting to note that theft and adultery are the principal charges for which ordeals are used by the Indian tribes: This, in fact, appears to be the world phenomenon, because almost all the counties of the world are found practising ordeal for the detection of theft and adultery. (Vide ERE Vol. IX for the use of ordeal in various countries.).

(vii) *Striṇam Silābhiyage and Paradārābhimarṣaṇe*: For the case of adultery and infidelity or the doubtful character of woman.

Investigating the chastity of woman by means of an ordeal is a universal feature. Use of ordeal for this purpose is particularly recommended by Nar. obviously for the reason that no human proof can satisfactorily prove the chastity of a woman. This provision by the Dh. writers has, however, a long term grasping effect on the Indian mind, which is enhanced, also because of the illustrious example of Sita clearing her character by entering into fire. The Indian tribes often resort to the ordeal for this purpose (Vide Appendix I).

(viii) *Saṅkāsu*: Ordeal is an ideal means in all cases of doubt—it is helpful in the legal matters when the ordinary means fail, while it is helpful in the legal matters when the ordinary means fail, while it is helpful in clearing doubts regarding the character of an individual. Kośa is particularly recommended for the charges of suspicion.

(ix) *Viśuddhaye or Atmaviśuddhye*: We have already observed that the divine means can be used for the legal purpose as well as for the popular one such as self-purification. Ordeals could be resorted to on personal grounds in which there is no litigation as such, but, in many cases self-purification also does not remain purely personal. It has to be proved in the public interest. Kāt. quotes the view of Bhṛgu that persons facing public scandals should be tried by means of ordeals (such as Tulā etc.) Bṛ. points out that a wise person should, in the cases of the charges of the greater or inferior sins, purify himself in the assembly, lest he may be considered as one connected with such acts.

In public interest, therefore, we find in ancient India, that a person joining a post of

higher responsibility used to clear his character by undergoing an ordeal. Madras Epigraphy Report, 1915-1916 gives following interesting details regarding the working of the village assemblies.—"in presenting accounts for audit by the assembly, each of these was to undergo ordeal of holding red-hot iron in his hand. If he came out safe and hence also pure, he would be presented with a Bonus of one quarter of the surplus. If on the other hand, he burnt his hand and hence was in default he would be fined 10 Kalañju without of course further bodily punishment.

Ordeal is recommended not only for clearing one's character but also for establishing one's trustworthiness (Visvāsasandhane). This is particularly necessary in all joint undertakings and the concern under partnership (Kriyāsāmuha- kartṛtve) and may help in the disputes regarding the inheritance (Rikthinā Vibhāge). Kosa is particularly considered most suitable in all such cases.

(5) Ordeal as a method:

(i) *Ordeal, a means to an end:*

After the inclusion of the ordeal as a means of proof in the lawbooks, we find that rules regarding its procedure are made more accurate and precise. Strict adherence to these rules for the execution of the trial is extremely necessary. Even the slightest deviation from the rules mentioned by the Śāstra might result into the failure of the trial. The ordeal must, therefore, be executed according to the śāstra laid down, otherwise it may not be able to achieve the desired goal.

Ordeal comes under evidence (i.e. Sādhana), An important idea that has I thus crept in it that the ordeal is afterall a Sādhana meant for achieving the Sādhya. A natural corollary that can be derived is that the Sādhana can be tried again if the Sadhya is not achieved. Kāt. thus recommends a retrial of the ordeal if it fails to achieve its object.

The ordeal might fail because of various reasons—

(a) The trial might not have been executed strictly according to the rules laid down by the Śāstra (Ayathoktapradattāni).

(b) The procedure may be followed correctly but the persons conducting the trial may not be duly qualified i.e. the ordeal, the Sadhana, might not have been handled by proper persons. Ordeal conducted by foolih, greedy or wicked persons is bound to fail even If the whole procedure is followed correctly. (Yathoktānyapi Mūrkhādibhhih, dattāni).

We, therefore, find that these writers stress that the ordeal must be conducted by the presons expert in conducting the trial (Divyaviśāradaiḥ). Every minutest activity of the trial is to be carried out by an expert. e.g. In the fire ordeal, one is required to heat the iron-ball. Heating of the iron must be done by an expert blacksmith who knows the technique of heating iron and who has got previous experience of its kind. Similarly we may require expert carpenters,

braziers, archers, runners, astrologers, priests, medicos and so on.

(c) The ordeal may fail because of technical difficulty. (Sādhanasya Vyāghāte) e.g. (i) the mechanical defect in the apparatus used e.g the balance prepared for the trial may break at the eleventh hour. (ii) Unforeseen reasons e.g. the balance may not be able to indicate the correct positions of the scales because of a breeze of wind.

(ii) *Retrial*

In all such cases, the Dh. writers have allowed a retrial.

We find two views regarding the procedure to be adopted in case of a retrial. According to some, the whole procedure right from the invocation of Dharma should be undertaken a fresh, while according to others, the general rites preceding the trial need not be repeated again, only the trial part of the ordeal should be conducted again.

Ordeal can be retried only once and not again and again. If the person fails second time in the retrial thus granted, he is supposed to have lost the case.

(iii) *No ordeal against any other ordeal:*

An ordeal can be tried again if it fails because of the various reasons noted above, but once the decision is reached at, it stands final. No other ordeal can be tried against it.

(iv) *Ordeal—The General procedure:*

The procedure of any ordeal can, in general, be divided into following heads—(a) The preparation required for the trial. (b) The rituals i.e. invoking Dharma and other deities and offering them oblations. (c) Tying the Śiraḥpatra—a leaflet containing the charges for which the person is tried. (d) Conducting the trial. (e) Declaring justice. (f) Offering felicitations to the innocent and awarding punishment to the guilty person. These points are discussed by us in the following chapter.

(v) *Ordeal—Social belief or the Public Opinion*

Dh. writers have discussed all the technical aspects of the ordeal *i.e.* its utility, rules of application, procedure and so on. It is, however, possible to get an idea regarding the social belief or the opinion of the people in general regarding this method through the casual remarks made or the discussions undertaken by these writers.

(a) Authority questioned

Right from Manu, we find that the Smṛtikāras have discussed the origin of the ordeal and have tried to support it with a reasonable sanction or a proper authority.

The ordeals should be accepted, points out Manu, since they are known and practised by great sages (like Saptarṣi etc.) and gods (like Indra who undertook various oaths, to clear the charges levelled against him with reference to Ahilyā) since very ancient times.

Vasiṣṭha also undertook such oaths before (the court of) King Paijavana. Vatsa also, charged by his step-brother, was not burnt by the Universal witness (Jagataḥ spaśaḥ), the fire, in the Fire ordeal.

Bṛ. and Pit. point out that the ordeal has been created by Brahma and is practised by gods and great sages (or the thoughtful persons).

These sentences are explained by the commentators as the Arthavāda sentences meant for eulogizing the ordeal. These statements are, however, also directed against those who question the authority of such trials.

Viśvarūpa takes up following discussion in this respect. The Pūrvapakṣa objects to the discussion of ordeals in the Smṛti texts. 'The provision for Divyas appears to be without proper authority', says the objector. It cannot be supported by the Pratyakṣa (and other proofs of knowledge) nor could it become the subject of Śruti, because Śruti does not aim at giving readymade formulas, such as 'particular means could achieve particular ends.' 'If that is the case, how is it that the Śruti recommends yāga for attaining Svarga? '—counter objection. The answer is—the point to be stressed here is not that of a particular means leading to a particular end. The scriptures, in fact recommend Svarga as a Kartavya, sacrifice comes in since Svarga cannot be attained without it. The ordeal can be supported by the Veda since it is meant for purifying the person.

'Should, then, ordeal be treated as Prāyaścitta (which is recommended by Śruti as. a Kartavya) meant for purification? '—' Yes, but that can be only one aspect. There is a difference between the two. Prāyaścitta is a purificatory rite meant for observance only and is limited to the self. There is no *legal dispute* about it. The ordeal can prove *legally* that a person is pure (innocent) and not guilty (Aduṣṭavyavahārasiddhiḥ). The practice of ordeal can thus be proved by the Śruti pramāṇa).

(b) Suspicion regarding the validity of the trial

Medhathithi (800-850 A.D.) who tries to evaluate the merits of the method on objective basis, has to face above mentioned objections of the Pūrvapakṣa. Before we go through the answers given by him, we must point out that the objections raised here by Pūrvapakṣa are not just of kind of those undertaken for Śāstric discussions, but are real, reflecting the general feelings of the people of the time. We can conclude this on account of similar references available in contemporary literature. The objection raised by the objector is very nicely reflected by Bhavabhuti in the famous Uttararāmacarita in a speech uttered by angry Janaka questioning the authority of Agni to test the chastity of his daughter Sitā.

As regards to the first objection, Medhātithi points out that the question posed is simply inaginary. The ordeal has worked efficiently in the past. There are historical examples of Vatsa and others who have tried such tests with success arid the trials have served their purpose of deciding the truth.

As far as the question of violating the natural way of declaring justice or that of fraud is concerned, Medhātithi points out that such violation or fraud is always rare. That is not the natural phenomenon of the test. We must know that every rule has its counterpart i.e. a possibility of its being violated. Perception has been accepted as a means of knowledge inspite of the tact that there can be a wrong or defective perception. We can only say that, a rule cannot violate, that which violates cannot be a rule or the method that is accepted. A Śapatha cannot violate; that which violates cannot be a Śapatha. Now, we may find apparent contradiction in the result i.e. the guilty may come out unhurt and the innocent may be convicted, but this should be explained as follows: The guilty may come out safe in the trial because of his many pious deeds in the past birth. The innocent may, likewise, be convicted on account of his sins (Doṣa) in the former births. Afterall, the results of our deeds in the past births manifiest by dictating themselves in mysterious ways. As far as fraud is concerned we must note that, such frauds are not natural with the trial and that other proofs such as witnesses etc. also are not free from frauds.

(c) Fraud (Kuhaka)

The Dh. writers have, with growing concern, cautioned and advised the king to act against the malpractices creeping in the trial. There can be a fraud in the trial in two ways: through the person conducting the trial and through the person undergoing it. The Sāstrakāras have asked the king to hold all trials conducted by unauthorised (i.e. other than Prāḍvivāka) and unqualified persons (such as foolish or greedy persons) as void. The trial is rendered void if it is undergone by deceiptful person. The word Kuhaka has been explained by Asahāya as a person who brings the whole situation under the influence of some mantra or medicine (and thus nullifies the effects of the trial). Kkh. points out that the person holding steadfast the effects of the trial through black magic (Āsurakaiḥ mantraiḥ) are the worst thieves or the thorns of the society and should be sternly dealt with by the king. They should be expelled from the kingdom. The person who takes false oath goes blind in the house of his enemy. The ill-thought person opens the door of Raurava hell for himself the Purāṇa points out.

(d) Is more useful, must be used with reservation:

Asahāya is probably aware of the limitations of this otherwise very useful method of deciding truth. He, therefore, advises people to protect it from its cheaper use. Commenting upon a stanza of Nār. who mentioned at one place only two proofs—witnesses, and documents—to decide doubtful cases of the quarreling litigants, Asahāya' points out that the sage has recommended here only two proofs—witnesses and documents—for the purpose, but he has not recommened the third one i.e. the ordeal eventhough it has more merits, simply because of the fact that, the litigation in court is a matter of common place occurrence, going on like a flow of water. It is of varied nature, divided into eighteen titles of law in which, justice is required rather immediately and

for which quick and easy methods like witnesses and documents are always good and beneficial. The ordeal has an elaborate procedure and is to be used for higher purposes only. It results in more serious punishments. These trials are thus required to be, used with reservation.

(e) To undergo an ordeal—a Socio-religious duty, gives prestige:

Śukraniti stresses the importance of this method by pointing out that it has been accepted by the seven sages to purify themselves and is resorted to by Vasiṣṭha and others. The person who does not accept or agree to undergo the ordeal out of self-pride is in fact Stealing (destroying) Dharma. Gods take away the merit (Dharma) and money (Artha) of the person—the Brahmin—who with his poor knowledge (i.e. self-ignorance) is not prepared to undertake an oath evenwhen he is required to do so. On the contrary, if a person desirous of self-purification offers himself promptly (atandritaḥ) to this method of investigation and comes out successful, he attains fame (in this world) and bliss in the heaven.

Dh. writers classify ordeal under Dharma which gives divine justice. It declares innocence—par excellence—of the person who undergoes it successfully. These writers ask the king to felicitate the person who is successful in the ordeal. It thus becomes a matter of prestige for the person undergoing the trial.

Conducting the ordeal is also a matter of prestige for the king himself since that is an act promulgating Dharma. King Mādhavavarman (575 to 600 A.D.) of Viśvakuṇḍin administered various ordeals from this point of view. Candrikā (or Candrāvatī) the queen of Laksmidhara of the Raṭṭa family proved her chastity through ordeal. Persons joining higher posts offered to undertake ordeal in public interest. We get many historical examples, which show that the persons have wilfully offered to undergo the ordeal which has become a matter of prestige for them. Tribal information also points out that the person undergoing ordeal successfully attained prestige in his society.

(6) Judgment derived from the ordeal:

(a) *Dharmanirṇaya*

We have seen that the legal procedure is divided into four stages i.e. Bhāṣā, Uṭṭara, Kriyā and Nirṇaya. After the case is admitted in the court and due reply is sought from the defendant, the judge, alongwith the other members, thinks of the proper evidence required, evaluates the evidence that is produced and releases the judgment.

The Judgment or Nirṇaya is of four types i.e. based on Dharma,Vyavahāra, Caritra and Nṛpājñā or Rājasaśāna.224 Each of these is again divided into sub-varieties and is always powerful than its preceding variety. Thus Vyavahāra is powerful than Dharma and so on.

Dharmanirṇaya

The Dharmanirṇaya is essentially based on truth i.e. it is the nirṇaya in which the wrong-doer admits his guilt or wrongdoing on his own accord and the plaint of the plaintiff is met without his being required to undergo further proceedings of the court by i.e. producing evidences etc. It *is also a Dharmanirṇaya when the judgement is derived by an ordeal,* because in ordeal also the main idea is to encourage the accused to tell the truth on his own initiative.

Vyavahāranirṇaya

The Vyavahāranirṇaya is one in which the litigation is fought out in court by citing witnesses and other proofs. Obviously, in this nirṇaya (as well as in the two varieties following) the truth is derived on the basis of the evidences available.

Caritranirṇaya

The Caritranirṇaya is one in which the decision is mainly based on the usages of the country, village or the family. Caritra also means circumstantial evidence or anumāna. It will appear that usages are means of decision in certain cases (apart from the question whether they are supported by the Smṛtis.

Rājaśāsana

When the king issues in matter of dispute an order which is not opposed to the Smṛtis or local usages and which is thought out as the most appropriate one by king's intellect or which is issued to decide the matter when the authorities or each of the two sides are equally strong, it is a decision by Royal command.

'Trial by ordeal was one of the principal features of Hindu jurisprudence' — observed A. Dubois. The four types of judgment discussed above are very helpful for us in understanding the basic principles of Hindu law, which thus stress the *need for arriving at the truth at the culprits' initiative* the ethical truth, reflecting the inner conscience of the culprit—the concept on which any law should be based. The legal truth, as contrasted with this Dharmanirṇaya, is afterall a matter to be adjusted-befitting the goals and ideals that are considered to be necessary and fit for making it possible for a human being to live an honourable and justified life in a disciplined society.

Dharmanirṇaya, which comes first, is the ideal concept, most desired to be achieved. Mundane needs are however primary with the human existance itself and are always satisfied with preference to the desired ideals. The Hindu jurists have as we have seen above, always given preference to the Vyavahāra-nirṇaya—the judgment based on human proofs—but they have never lost sight of the ideal, the Dharmanirṇaya—for which ordeal is adopted-a method firmly believed in—a deep rooted custom of the people by the

people and for the people.

(*b*) *Technical aspects*

We have seen that various aspects of ordeal are made more clear and accurate after developing it in its full legal context. Following points of legal accuracy may be noted with reference to the judgment derived from the ordeal.

(i) *Sīrṣaka:* We have seen above that the person making allegations, insisting upon the accused's undergoing the trial—should assure by means of Śīrṣakạ, a bond, that he would bear the responsibility of punishment, in case his allegations are prayed to be false. The Śīrṣaka is thus important which helps the judges to take action against person making false allegation.

(ii) *Mantras recited:* We find that the Prāḍvivāka who. conducts the ordeal and the accused person who undergoes it, address the deity of the ordeal with various mantras. The former asks the deity to act in a particular way if the person to be tried is innocent and do it otherwise if he is guilty. The accused person also, on his part, requests the deity to declare its wishes in the said manner. It is interesting to note that the mantras addressed by both, the Prāḍvivāka and the accused person, contain the signs of the success or the failure that are to be considered for the judgment. The individual declaration of the same by the two parties i.e. the persons conducting the trial and the person undergoing it—is of utmost legal significance. Such individual declarations have mutual binding over them. The person undergoing the trial is thus legally bound to accept the result of the trial.

(iii) *Śiraḥpatra*—A letter known as Sirahpatra is tied on the forehead of the person undergoing the trial. It contains following matter —

(a) The actual charge for which the person is tried.

(b) The famous stanza Ahaśca rātriśca ubhe ca sandhye etc.

(c) The mantras with which the person addresses the deity of the ordeal. These mantras contain the signs of the success or the failure of the trial.

The Śiraḥpatra thus becomes an important legal document which helps the judges in interpreting the results of the trial. Introduction of Śiraḥpatra advances the legal status of the ordeal. It speaks of the high legal accuracy with which the instrument of ordeal was utilised and interpreted.

We find many historical examples which show that the rules given by the Dh. writers were followed accurately by the people. During the Maratha period, the letter thus tied on the forehead of the person was known by various names such as Bhākhāpatra, Bhākhāpatra, Śiropatra, Chīrapatra or Bhālapatra. The statement mentioned in the letter was interpreted very accurately and the ordeal thus tried was supposed to prove only the fact which was mentioned in the statement.

(iv) *The result to be watched by many persons* :

Dh. writers insist that the ordeal must be conducted publicly. The digests point out that it should be executed in presence of many persons. The king is asked to appoint experts in ordeals to conduct and inspect the proceedings of the trial. Besides these officials, we find that learned Brahmins, respectable dignitaries—persons who are pure and without any greed (or self interest)—who witnessed only facts, should be invited to witness the execution. These persons should report their observations. The king should release the judgment prepared by the Prāḍvivāka on the basis of these observations.

(c) Jayapatra

The Jayapatra should, according to the Dh. writers, contain brief statement of plaint, reply, evidence produced, discussions therefore, arguments, Smṛti texts applicable, opinion of the Sabhyas, decision and relief granted; and should be signed by chief justice and bear royal seal.

(d) Felicitating the innocent, punishing the convicted

The king should decide the judgment of the ordeal on the basis of the signs of the success or failure in the trial, discussed by the Śāstrakāras.

Accordingly, the king is advised to give the Śuddhipatra (document declaring the innocence of the person) to the innocent and felicitate him with due honour. He must be adored by offering Sandal-wood paste, garlands, garments (and other presents) to him.

The guilty person should be punished according to the rules. Punishment for the person whose guilt is proved through an ordeal, in general, consists of the payment of fine and banishment from the state. All the writers point out that the person convicted in the ordeal should be banished after recovering due fine from him.

Kāt. gives us the amount of the fine to be paid by the person convicted, which according to him, should be adjusted according to the method by which the guilt of the person is proved. Thus, if the guilt is proved by the Poison ordeal, the person has to pay 1000 (Paṇas), for Water ordeal he has to pay 6000 (Paṇas) for Agni 500, for Tulā 400, for Kosa 300, for Taṇḍula 200 and for Taptamāṣa 100 (Paṇas). 'This specifies the special fine to be paid on account of defeat by the ordeal in addition to the fine laid down for the defeated party by Manu', observes Dr. Kane.

Vṛddhahārīta recommended physical punishment for the person convicted in the trial. According to him the tongue of the person must be cut if the ordeal declared him guilty.

Kāt. has asked the King to recover 50 Paṇas from the innocent person. SC observes that this should refer to the person whose innocence is proved through ordeal. Dr. Kane explains in his notes that the 50 Paṇas that the innocent person has to pay is not a fine but is in nature of return (modern court fee) to the state for the services of judge etc.

(7) Divination in Dh. ordeals

(a) Ordeal is a method in which the judgment is declared through divine agency. Principle of divination is thus found working at the basis of the trial. Discussing the omens and portents of the Indian people, mainly drawn from the Kauśika Sūtra, G. M. Bolling points out following general features of the vedic : divination.

(i) 'A religious or quasi-religious ceremony is necessary to impart efficiency to the apparatus.

(ii) 'The general principle upon which most of them rest is the idea that an association being established between two questions, the answer to the one will be the answer to the other or that the person can answer both correctly who can answer one correctly. This is but a particular application of the fundamental principles of magic that the part may be substituted for the whole and the objects connected in any way eventhough merely by an association of ideas constitute whole. ...In some cases the indication of success is the occurrence of what we would term a miracle. This idea is employed in serveral forms of ordeals.

(b) Ordeals in Dharmaśāstra are fully influenced by the characteristic features of the Indian Deities and the science or the procedure of worshipping (Pūjāvidhi) them.

(i) Before worshipping any deity the person is required to purify himself. The person undergoing an ordeal is also accordingly asked to observe various purificatory rites such as observing fast, taking bath with clothes on (sacaila) and so on. Prāḍvivāka who conducts the trial also should observe these rites.

(ii) Dharma is the principal deity of the ordeal in general. Dharma, alongwith host. of other deities, is invoked and worshipped with what we may technically call as Ṣoḍasopacāra Pūjā. It is followed by certain Homas.

(iii) The object of the ordeal is treated as the main deity of the particular test that is undertaken e.g. Dhata is the main deity of the Balance ordeal. Agni is the main deity of the Fire, Taptamāṣa, and Taptaphāla ordeals, Jala of the Water ordeal, and Dharma and Adharma of the ordeal of Dharmādharmau. These deities are requested to declare their dictates in the matter of dispute that is to be investigated. The eulogistic stanzas with which these gods are addressed are gradually found increasing in number. These gods are described as abodes of truth, omnipotent and omnicient.

(8) Stages in the development of the Dh. ordeals

Method of ordeal was a deep-rooted custom of the people. It was practised by the people in small groups in which the accused person underwent some kind of test. Dh. writers accepted it as a means of proof.

Dh. writers give us law which is advanced one. Even GDS, the oldest of the Dh. works known to us, reveals a developed system of law. It has been pointed out above that Maskarin the commentator of GDS makes an essential difference between the legal oaths and the popular oaths. There are no specific rules regarding the place of conducting the trial etc. for the popular oaths. It must be pointed out that the Dh. writers accept and discuss only the legal oaths i.e. oaths used in a legal suit which is required to be executed at a definite place, in a definite form.

Examples referred to by Manu and those available in the old vedic literature show that these tests were conducted in small social groups as per local conventions.

In earlier times we find that ordeals were conducted locally i.e. the accused person used to undergo the trial in presence of some persons, either in some temple or in royal or Brahminical assembly. The whole affair was limited to the person undergoing the trial, but gradually the ordeal was becoming more public i.e. the king, government or the .people at, large were also, involved in these tests.

From the point of view of the form of these methods, we find that, oath is just a verbal declaration. It was developing into ordeal i.e. more physical, more concrete. If we study the history of ordeals in general, we find that old drastic trials have tended to be milder in their forms during the course of their evolution, and particularly with reference to the Indian ordeals, we must say that the Dh. writers have actually made them as mild as possible. The discussion of each of the ordeal in the next chapter would clearly show that none of the Dh. ordeal is that way risky and is humanly safe to undergo. The Indian jurists are, in fact, thus, to be credited for a deeper insight, who judging the utility of these trials not only accepted them as a means of proof but disciplined them to a standard variety which would essentially be safe but efficient enough to put the accused person under a great physio-psychological test. Right to live has been thus accepted in promulgating these ordeals.

We have seen above that, definite history of the evolution of law proper starts in India with the emergence and growth of king as judge. According to an important amendment made by the Dh. writers, the ordeal was handed over to the king. It was thus the duty of the king to see that the ordeal is conducted properly. This important change is first indicated in the verse Sacailam Snātamahūya etc. (Viṣṇu IX. 33, Yaj. II. 97). Variant readings (deva and nṛpa) in this verse really speak of the changing state of affairs. All the later writers clearly point out that it is the duty of the king to execute ordeals properly.

After taking over of the ordeals by the king, execution of the trial becomes a government's responsibility. Many persons are engaged and hosts of duties are allotted to them. 'Experts of ordeals' are deputed and the law is interpreted by its letters. Elaborate rules are framed and strict adherence to these rules becomes a necessity. This is revealed through the writings of Nār. Kāt. Bṛ. and Pit.

A king can personally officiate as the head of executors or he may appoint an officer alongwith a team of learned Brahmins or citizens to assist him. It has been however

mentioned by almost every writer, and mentioned so repeatedly so as to become a rule, that the Prāḍvivāka should conduct all the activities of the ordeal on behalf of the king.

Religious ceremonies and rituals added preceding to these trials form an important stage in the development of the ordeal. We have seen elsewhere that the world ordeals are found to have been influenced by priesthood in general and the Indian ordeals form no exception to it. Pit. has elaborated the religious aspect of these methods. The religious ceremonies have a natural psychological influence on the mind of the person undergoing the test. It thus turns the ordeal into a religio-psycho-legal test.

E

Enjoyment of Dhanādhikāra:

A person performing with relation to *asvāmika-dhana* an act which, if it were within his *adhikara*, would be a natural expression of that *adhikāra*, could acquire it and become *svāmi* in respect of it). *Bhoga* in fact leads to *adhikāra* in such cases. The *adhikāras* of the public in respect of "public property" are distinguishable (IV C x).

There is an exception of the first proposition above in regard to a class of *asvāmika-dhana* already mentioned (IV A v). We know that *sva* is necessary for sacrifices (VI ii); what is also imperative is that sacrifices, śrāddhas, and worship generally cannot effectively be offered on the land of a stranger. "The person who has not obtained by lawful means the earth whereon he makes the sacriticial altar, earns not the merit of the sacrifice he performs)." "When a man performs a *srāddha* in honour of the *pitṛs* (ancestors) on earth belonging to another, the *pitṛs* render both the gift of that earth and the *śrāddha* itself futile...)." Forests, holy mountains, tirthas ("fords", "places of pilgrimage"), and temples (see IV C viii [a]) are all *asvāmika;* so are the banks of rivers).

No earth requires to be purchased there for the sake of performing religious rites. In fact to this day the notion survives in India that the owner of the soil must give permission for religious worship to be done on his ground, and he will naturally stipulate for some of the merit; permission is asked for the rite to be performed, and a fee, called significantly *ra ja-varaṇa*, is sometimes exacted). This is the basis of the report made in the early days of British rule that the poor Indian peasant had to pay even for the right of offering prayers to God). The prevalence of pilgrimage and performance of *śraddas* at places like Gayā may not be unconnected with this notion of the necessity of the *yajamāna's* owning the land in question or at least not using without permission soil belonging to another.

Dāya

In older authors *dāya* covers both spiritual and secular inheritance), which is divisible

between sons, or their male lineal representatives at a division of the patrilineal joint family whether during the lifetime, or after the death of the senior male ancestor). Attempts to define the term fail to satisfy, and the divergencies between the Mitākṣarā and the Da yabhāga schools cannot be reconciled. An altogether inordinate amount of space is given to this problem, while texts are verbally homologated without any apparent attempt to understand the fundamental issue (if it is understood the convention of juristic writing prevents its emergence in so many words). *Dāya* originally comes from the root *dā* "to divide", and not, as Jimūtavāhana would have us believe, the root dā, "to give").

Hence from the commencement the view existed that *dāyādas*, i.e. sons and other "takers of dāya", had some sort of *adhikāra* by relationship alone, arising at their birth (cf. the text of Gautama above, IV A iii), and enabling them to take at partition property in which a preexisting right justified their participation. The implications of this, however, tended to curtail the ancestor's discretion when a division was to be made in his lifetime, and even to curtail his powers of disposition long prior to any question of division). Since, as we shall see, South India and the Deccan were familiar with joint households in which as a matter of practice the manager's freedom was regulated by the rights of his own issue, and perhaps other *dāyadas* as well, the controversy as to the definition of *dāya* was far from unrealistic.

Definitions may be classified:—

(1) early definitions—

Pitryaṃ jñāti-dhanam va, "father's property, or the property of a relation");

anvayāgataṃ dhanam, "property acquired by succession");

pitṛ-dvārāgataṃ dravyaṃ mātṛ-dvārāgatañ ca yat, "a thing acquired through the father and acquired through the mother");

(2) *Dāyabhāga definition*—

Pūrva-svāmi-sambandhādhinaṃ tat-svāmyoparame yatra dravye svatvaṃ tatra nirūḍho dāya-śabdah+, "the word *dāya* is used in a specialised sense in respect of property in which Property arises upon the cessation of the previous Owner's Ownership, Property itself dependent upon a relationship with that Owner");

(3) *Mitakṣara* definition and sequela—

yad dhanaṃ svāmi-saṃbandhād eva nimittad anyasya svaṃ bhavati tad ucyate, "it is called *dāya* when it is property which becomes the *sva* of another merely by reason of relationship with the Owner");

dāya dhanaṃ svāmi-sambandha-vaśal labdha-dhanam, "*dāya* is property which is acquired by way of relationship to the Owner");

vibhāgārhaṃ svaṃ svāmi-sambandhād eva nimittād anyasya svaṃ bhūtam, "*sva* capable of partition, which has become the sva of another merely by reason of relationship with the

Owner");

pitā-putra-samudāya-dravyaṃ. vibhāgaraṃ pitṛ-dravyam, "a thing common to father and son; a thing belonging to the father which is fit for partition");

asaṃsṛṣṭaṃ vibhāgārhaṃ dhanam, "Unreunited, partible property");

vibhāgārhe-dravyam: anyadiyaṃ dravyaṃ svāmi-sambandhigāmi, "a thing fit for partition; a thing belonging to another and passing to the Owner's relation").

That females might be *dayadas* we have already seen (IV A i), subject, according to authors whose doctrines became prevalent, to the rule that inherited property should not pass out of the family of a woman's marriage except for her maintenance or necessity, or the husband's spiritual benefit, but should pass (on her *svatva* ceasing) to the next heir of the deceased husband, etc. Based primarily on texts of Katyayana, the "limited estate" was always established in Dāyabhāga law, where it is explicitly stated (Col. XI, i, 56 f.). In the "Benares school" its first appearance is in the work of Mādhava (14th cent.) being conspicuously absent from the Mit. The evidence of inscriptions suggests that Brahmanisation encouraged some castes to place restrictions upon females' enjoyment, whereas Dravidian communities, while allowing the husband the management of the household, had accorded a widow full authority over the joint estate: but the matter is not yet fully worked out.

Whether the property of a woman could be *dāya* from the point of view of her relations was thought worthy of some discussion).

The Mitākṣarā definition, which is obviously older than its source (c. 1125), has the merit of attempting to place under one head two very different types of *adhikāra*. The mental picture was of concentric circles of "relations", from the son to the king), having *adhikāras* in respect of any person's *dhana*. "Relations" include agnates and cognates, the spiritual teacher, pupil, and fellow-student, then fellow-Brahmans, or, in the case of non-Brahmans, the king (or his assignee). It was axiomatic in *dharmaśāstra* that a king should not take, or if he took should not keep, the property of a Brahman. While Brahmans were attached to spiritual, religious, and educational functions, the need that property should flow perpetually from the non-Brahman to the Brahman and not *vice-versa*, and that in the hands of the Brahman it should be protected by superstitious sanctions, made adequate sense. By Manu's time, however, Brahmans had ceased to confine themselves to priestly functions: some of the restrictive rules remained, none the less. The outer circles' *adhikāras* hardly deserved the name as they became operative only in marginal situations and were, from most practical points of view, purely contingent upon the death, etc., of the Owner without leaving surviving him any heirs of a nearer category. The inner circle however, occupied by sons, grandsons, and other agnatic descendants to the fourth degree counting inclusively of ancestor and descendant, contained persons whose rights over the property of the ancestor were, apart from special texts giving the father special powers, so pervasive as to inhibit certain alienations, and to enable grandsons to demand from their fathers partition of the property left by the grandfather and in the hands of the fathers. The crucial passages

are Mit. (Col. I, i, 27 and I, v) and, in explanation of the true meaning of I, i. 27, MRP, 210. Misunderstood in the British period, these texts establish that all joint family property is "owned" equally by father and sons, but that the father has special powers of alienation with reference to some properties. It is clear that by custom, however, partitions at the demand of sons against the father's will were unusual unless the father were utterly incapable; and similarly sons were sparing in their control over their father's dispositions. These rights of control were exactly what many northern and all eastern jurists found it impossible to accept and impose upon their understanding of *smṛti* texts, some of which suggested the reverse. Jimūtavāha makes the most of Manu IX, 104 Devala and Nārada cited in his ch. I. The texts collected by Jhā, HLS, ii, 12—24, form even more impressive a testimony. However, the Mit. school explain all away on the basis that what sons lack during their parents' lifetime is *svātantrya*, not *svāmya* (notwithstanding Devala's actual denial of *svāmya* in so many words). See below, p. 97. By a pleasing metaphor, drawn from the law relating to pedges and mortgages (IV C viii [h]), the Mitākṣarā school call the *dāya* of the inner circle *a-pratibandha*, "unobstructed", i.e. permanently operative until satisfaction by partition; while that of the outer circles is called *sa-pratibandha*, "obstructed", i.e. dormant rather than contingent until the happening of events which may never happen, and, while dormant, not unreal, but merely ineffectual.

It may be that two entirely different phenomena are wrongly classed under one *śāstric* heading by this device; in any event the Bengal school refuses to allow male issue any rights whatever in the father's property, however acquired, but on the contrary maintains that the father has rights over the acquisitions of the male issue. The famous text of Manu (n. 333 below) was not forgotten, but Jimutavāhana in fact relied upon Kātyayana: Col. II, 65, 66, 71—2. The trans. of , II 46, appears to be faulty, for the father is competent to sell, give, or abandon his *son*. The denial of the father's Property in his son at II, 67 is intended for a different purpose; and is based upon jim.'s notion until the father's death, *sannyāsa*, or *pātitya* enable the male issue to come into an inheritance once and for all, having, on that account, never less than a fractional interest in the undivided estate to which they have succeeded pending a partition).

The Joint Family

The joint family remains to a large extent the characteristic form of property enjoyment, in which *adhikāras* of a multiple character converge upon each *dhana*. Even in 1956, when legislation in India seriously, and still further, modified the extent to which joint family property could be enjoyed by successive generations, the essential character of the institution, which lies, in the Mitākṣarā school, in the common ownership of ancestral property between father and son, has not been destroyed).

The *sādhāraṇa-dhana* or *samudāya*, "common estate", belonged according to that school to the several generations jointly, the manager, called variously *gṛhin*, *gṛhapati*, "householder", *pradhāna*, "chief", *prabhu*, "boss", *kuṭumbin*, "family-possessor", and in modern times karta, "officient", being their representative in dealings with strangers). Those

males who were entitled to claim a share at partition, or to initiate a partition, were agnatically connected to an inclusive limit of four generations, the natural limit of sapinḍaship. *Sapinḍas* are agnates within a pattern of four agenerations of living *sapinḍas* and three generations of dead *sapinḍas* (participating at *śraddhas* in their descendants' property), the word originating from two sources:: (I) *sa + pinḍa* ("body"), and (2) *sa +pinḍa* ("ball of rice", "rice ball offered in the *śrāddha* to ancestors"). *Pinḍa* definitely did mean "body", as the Mit. insisted (see Raghuvam+s'a II, 57, 59, and the list of meanings given in the Medini (*pinḍo bale bale sāndre*, etc.)). The basic meaning appears to have been a conglomeration, or mass made up of different components. Hence, e.g. "body". "rice-ball", "flock of sheep". Pinḍ means "body" in Panjābi to this day. Nevertheless, the connexion with *pinḍa*, the rice-ball offered in were ancestral worship, existed before the definition of *sapinḍas*, and jointness in food and worship and connexion for the purposes of giving and taking such offerings were intimately connected ideas; taking that as a basis sapinḍaship for marriage, and connexion through cognates seems to have developed, whence the "body" meaning became emphasised. Those who were messmates in life were usually givers or takers of *pinḍas* in *śrāddha*-ceremonies, other members of the agnatic family within the degree of sapinḍaship sharing in the benefit of the ritual).

Originally all acquired property seems to have been joint. Later exceptions were created to enable a family to remain undivided though individuals had shown initiative and been industrious. The category of "self-acquired property", i.e. that acquired without detriment to the family estate, was not compulsorily partible): in fact earners must often have preferred to merge their acquisitions or waive their special rights at a partition; nevertheless the classical *dharmaśastra* provided equitably for objections to sharing. Family property, even when lost, had a sentimental value, and when recovered with the aid of one member ("coparcener" in Anglo-Hindu language) the *śastra* provided for the settlement of the others' apparently unreasonable claims upon it). Even after a partition, which was made *per stirpes* and upon the assumption that all partible property had been available to all relevant generations since the previous partition, the separating members retained the right to reunite with a view to equal sharing eventually), provided that they were within close degrees of kinship (in order to prevent abuse of this *adhikāra* of residual jointness). The text of Bṛ. relied upon by the Mit. on Yajn. II, 138 a, and other front-rank authorities to show that only brothers, sons and their father, or uncles and nephews could reunite, is explained by the Viv. Cin., the Vy. May., and by Mitra-miśra, all important authors, as merely illustrating the divided coparceners who might reunite. K. iii, 766. None, however, suggests that a person not formerly joint could ever reunite (though this has been achieved in Anglo-Hindu cases-law). Obviously the desire of the Mit., etc., was to put some limit to "sponging", for the notion of residual jointness could go much too far.

The needs of an agricultural, commercial, or even professional family built upon the psychological and legal foundation that the property of X belongs to all his relations even during his lifetime, and his preeminence merely consists in his having acquired it, etc., were not conducive to individualism. But patriarchy existed as well as patriliny. The sons' birth-right undoubtedly gave them a right to challenge rash acts by their father, and to

threaten to separate if their views were not attended to, but social pressure must have hindered, as it still does, peevish separations by sons. Anglo-Hindu case-law allowed some brake on sons' desire to partition in Bombay state, based partly upon a misconstruction of the texts and partly on unproven "custom"; while in Punjab customary law the son has not generally the right to separate without his father's consent. The long battle between widows and their agnatic kindred by marriage (and the latter's wives) was settled diversely in different parts of India). To the references adduced at n. 165, add the custom referred to by Medhātithi on Manusmṛti VIII, 3 (Derrett, "Strange rule of *Smṛti* and a suggested solution", *J.R.A.S.* 1958, 17f., at p 19), and the very curious custom referred to by Sāyana (14th century, Deccan) commenting upon ṛg. I, 124. 7, where the strange word *gartārug* is explained (see also Nirukta III, 5). Sayaṇa says, "Just as in practice a certain widow approaches the *garta* ("dicing-table") in order to obtain *svakiya-rikthāni* ("her own estate"). But the *sabhyāh* ("members of the court"), having examined her (or "questioned her"), and having "beaten with the dice" any property she may take up, grant (or "award") to her that *dhana*." The words "any property" in this translation represent *yadiyaṃ dhanaṃ*, which may very well mean "the property of whichever person". The reference by the very reliable reporter *sāyaṇa* must be believed. It accords extremely well with what Medhātithi tells of as a notorous Southern custom, and it is more likely that the usage was common knowledge, than that Medh. obtained it from the Nirukta or other pre-Sāyaṇa material on the Ṛgveda, though the latter is certainly possible. The meaning is apparently this: a sonless widow, whose right to separate property out of her deceased husband's joint family estate was in dispute, because of her failure to agree with her brothers-in-law, and because of the undoubted southern rule that only a *divided* sonless man's property would pass by succession to his widow (Mit. on Yājñ II, 135—6, p. 221; Col. II., i, 30, 39), applies to the court, which meets in the appropriate public hall, for relief. Their decision will be two-fold: is the widow qualified to take a share in the family property (chastity, etc.) assuming some partition is essential in the circumstances; and secondly, if so, what share, i.e. what lands, etc., in the present occupation of the brothers who are liable for her maintenance, shall be allotted to her? Satisfactory answers to the court's question settle the first point, and the use of dice (after she has expressed her preferences) settles the second: the brothers must settle amongst themselves how the balance is to be distributed and worked. No doubt a method of drawing lots was used. The continuation of the word *garta* in the specialised sense, "gambling-table", or "gambling-hall", while in the original passage it probably meant only "hall", is probably due to the use of dice to settle such practical problems. Gambling had, it seems certain, lost its social and magical importance amongst the general public by the 14th century, but any public gaming would no doubt take place in the same building as housed the court (not that this is relevant here). There is no question of the woman herself being struck with dice (as someone has suggested), but it is not quite impossible that her chastity, if impugned by the brothers, might have been inquired into by consulting dice! That does not seem necessary, however, to explain Sayaṇa's passage.

These passage are good evidence for a rule that in special cases even the widows of coparceners would obtain allotments of family property. Whether they would be entitled

to pass them to person of their choice is, of course, quite another matter. In this connexion the inscriptions nos. 429 and 538, App. B. (1918), *Ann. Rep. Epigr. (Madras)*, 1919, p. 97, dated in the 14th year of the Cōla emperor Rājādhirāja II (A.D. 1180) and situated in the Tanjore District are informative. The king permits widows (presumably if they have no sons or step-sons, etc.) to inherit *all* the property of their husbands, apparently including the individed share in joint family property. It was not always advisable for women to take actual shares at partitions, or for females to inherit shares for an absolute estate. We have seen (IV A i, B IV) that females on the whole were permitted to inherit subject to a limited estate; as for partition, texts specifically gave them shares. Daughters who were unmarried were entitled to a ¼ share, i.e. one-fourth of what they would have had they been males, but most jurists interpreted this as a vague requirement that their needs at marriage should be attended to, which in many castes would cost the family much more than that ¼ share). Mothers, wives, and grandmothers were likewise entitled to shares at a partition in order to secure their independence). These shares were subject, eventually, to a limited estate. One southern jurist of note denied that they were entitled to specific shares, but merely to maintenance, and his view has been followed in practice in Madras, Andhra and Kerala. Sm. C., followed in Madras (K. iii, 606); cf. the equally disturbing view of the Vyavahārasāra and Vivādacandra cited by Kane, iii, 605. The trend away from allowing specific shares for women appears at first sight to be hostile to their interests as well as destructive of the plain *smṛti-rules*, but that is not necessarily the case. Maintenance, though it implies dependence, can be an extremely valuable right in the hands of a determined female.

The jurists were much concerned with the question whether a coparcener in the Mitākṣarā school might alienate his undivided interest, and whether the coparcener in the Dāyabhāga school might alienate his undivided share. It seems that alienation of any common property without consent of co-owners was sinful, but the question was whether it was effective in law. It seems clear that there was a considerable body of opinion in Bengal that the alienation would be good, and the alienee would have a right to call for a partition, or to press his claims when a partition occurred). In the Mitākṣarā school however it was not until the British period that such transactions were permitted, and then only in the South of India. *Suraj Bunsi* (1879) 6 Ind. App. 88, 102. The present writer has always contended that this was not evidence of the breaking-up of the joint family, but proof of its ability to move with the times. Junior members wanted to utilise their undivided interests without being obliged to sever from their agnates. The hitherto unnoticed document in the *Lekhapaddhati*, p. 56, according to which a son takes an advancement from the joint estate upon undertaking that when a partition takes place his share is to be debited by that amount, shows that even in western India the idea of quasi-separation within the framework of the joint status was understood. The reasons for the distinction are still open to doubt.

The history of *dāya* in the joint family is not complete without the puzzling presence of a customary family, consisting of husband and wife and their children, each spouse bringing his or her share to the common home, and each child taking an advancement on his or her marriage, and partition normally following marriage. Aparārka emphasises the point that

partition is normally for those who, having completed their Vedic studies (where appropriate), have married or are about to marry. The Thesavalamai code prepared by the Dutch reveals that the state of affairs mentioned in the text prevailed in Tamil customary law. The special customs of the Chettis support this even for modern South India, and customs in other castes point the same way: see instances cited in Derrett, "Supreme Court and Acquisition of Joint Family Property". That such families existed in the South is certain, and there are traces of such ideas even in the jurists who normally adjust their data to the Āryan pattern. The Mit. interprest *pitṛ-dravya-* in Yjñ. II, 118 as *matāpitro dravya-*, and thus very curiously selects as impartible self-acquired property only that which is earned "without detriment to the property of the father or of the mother" (Col. I, iv, 2). Since joint family was normally (and theoretically exclusively) held by *sapiṇḍas* as partirilineal joint family enjoyed by agnates, there seemed to be no question of acquisitions being joint if they were acquired with the aid of the mother's property. Surely they would either be part of the mother's *stridhana* or a present from her to her son or step-son. The fact that a family might have several mothers complicates the position, and makes it *prima facie* undesirable that property earned with the use of a mother's property should be *sādhāraṇa* to the agnatic family of father and male descendants. However, this passage (which no one seems to have explained) makes sense if father's and mother's property formed a joint mass, indistinguishable until death or divorce. The śātric subordination of sons, especially in their exercise of their right of partition, to their widowed mother (treated perfectly seriously by even Jimūtavāhana) also makes sense against this background. This is of the patriarchal joint family, the wife joining her husband's family and bringing her dowry, while the husband contributes nothing but a place in his ancestral home. How far this type of family influenced the development of the *apratibandha* theory is still open to conjecture.

No space is given in Sanskrit juridical literature (outside the marginal anācāra literature). Most anācāra works are late. Kane mentious, without particulars, only the Anacara-nirṇaya. K. iii, 848, 856 f., discusses the earlier treatment of anomalous customs. The special customs of Malabar are described in the Keralotpatti and Aliyasantānam, works that, so far as is known, have not been critically edited or discussed in this century to matrilineal and other types of family characteristic of Malabar. There the pure matrilineal joint family seems to have had no conception of individual property, and partitions were rare, they embraced whole segments of the family, the quantity of property allotted depending upon the numbers involved, allotment being calculated *per capita* but not made to individuals. Jurists and logicians studying the nature of Property make no reference whatever to this type of property-enjoyment; and the same applies to the mixed, or a "half and half" systems known in Malabar).

Community of goods between spouses?

The rule *dampatyor madhyagaṃ* (or *madhyakaṃ*) *dhanaṃ* is ascribed by Jagannatha in the 18th century to an unknown *smṛti* writer Datta). Probably it was by that time anonymous. However it is as old as the 3rd century since it appears in Sabara-svāmi). It was taken

seriously by jurists, for it is referred to by Viśvarūpa commenting (in the 8th century or earlier?) upon the Yājñavalkya-smṛti), and it is commonly cited in the 17th and 18th century works on Property). Literally it means, "Property is joint, or common, between spouses. The normal words for "joint", namely *sādhāraṇa* and *samudāya* (the latter implying that various sources have combined to provide an undifferentiated fund) are here discarded for the word *madhyaga*, or *madhyaka*, which imply "indifferent", equally applicable, that is to say, to either. But the age of the text is so great that no great reliance may be placed upon any inference to be drawn from the word alone. *Madhyaga* is found, however, in the sense of *sādh.*, "joint".

Classical Hindu law knows that husband and wife are indivisible), and that no partition actually occurs between them unless the husband becomes *patita* or a *sannyāsi*, and even then some spiritual jointness remains.They are one flesh: Sruti cited in Dāyābhāga Manusmṛti IV, 184; K. ii, 428, 556—7; iii, 703. Hence, the wife's interest in the husband's property. Medh. on Manusmṛti, IX, 44; the discussion at K, iii, 603, n. 1140 is valuable, with refs. The text *jāyā-patyor* na *vibhāgo vidyate pāṇigrahaṇādd hi sahatvaṃ karmasu*, which is discussed there, is splendid evidence of the ancient concept of the likeness of spiritual "goods" and physical property. The idea of the spouses" jointness is found everywhere. See Sar. Vil. (Foulkes, sec. 3, 69, 71, 76—9) on Apast. II, vi, 14, 16. Even in Nandapaṇḍita's Dattaka-mimaṃsa (at I, 22 of the trans.) we find the idea that any wife of the adoptive father must acquire sonship in any son he adopts or has adopted, just as in any property he may acquire or have acquired. Yet it is quite certain that there was no community of goods between spouses in *dharmaśāstra*! Complete separation of property is the rule, the very concept of *stridhana* making sense only in that context). However, there is evidence that in the customary joint households to which reference was made in the preceding subsection the property of the spouses might have been merged, their earnings might have been joint, and at death or divorce a notional partition took place. As a literal legal rule the jurists had practically no use for it, though we observe that a spouse could not act as surety, on the ground of their community of property).

Moreover, the wife's *adhikāra* over the husband's property for her own maintenance and for family purposes, her right to manage it in his absence without any question of agency, and his *adhikāra* to take and use her *stridhana* in an emergency without incurring debt), and his right to confiscate her *strīdhana* for her misbehaviour), all point towards a sort of nexus of dependence and mutual responsibility which expresses itself in the property-sphere. The maxim may have been useful, notwithstanding the loss of its original meaning in the orthodox *śāstra*. In default of a better explanation of the development in question we may attribute it to a late Aryanisation of *smṛti* rules.

Clan or lineage: gotra

Sapiṇḍas, whom we have discussed above (IV C iii), were all *sagotras*, "possessing *gotra*, or patrilineal clan, in common". The residual jointness, cut down in practice by equitable

texts, was likewise referred to. In a not unimportant sense the *gotra* seems to have been a residual *adhikāri*, whose rights were to a large extent overshadowed by those of the king (except in the instance of the property of Brahmans), and whose rights cannot have been a collective right in any technical sense. Far too little is known about the residual rights of the *gotra*, upon which the *śāstric* writers are most reticent, emasculating texts which seem to have a bearing on it (e.g. the suprious text of Manu *avibhaktā vibhaktā vā*, Jhā *HLS*, ii, 8, and the curious text of Usanas or Vyāsa *avibhājyaṃ sagotrānam*, ibid., 73, which says that land, and the wages of performing a *yāga?*, water, women, etc., cannot be partitioned by *sagotras* even up to the thousandth generation). A Steele, *Law and Custom of Indian Castes* (London 1868), 239: mortgage assented to. Very early texts on a devolution of estates of deceased males suggest that the *gotra* takes at a relatively early stage. Rules of modern times, according to which villages are managed centrally, the land being redistributed periodically, may stem from practices admitting the local agnates, however remote, to ownership of the shares of deceased villagers to the exclusion of cognates, the king, and so on. Rules of Punjab customary law may be referred to in this connexion (see Rattigan's *Digest)*, which the present writer prefers not to discuss further. The *smṛtis* have a somewhat vague vocabulary, the words *sakulya*, "member of the same gens", *sagotra*, and even jñāti, "relative", which is later appropriated chiefly to cognates, being at times confused. *Samānodaka*, "one with whom one shares the rite of water-libation to remoter ancestors than decased *sapiṇḍas*", is by some authorities synonymous with *sagotra* (exclusive of *sapiṇḍa*) but the commoner opinion was that *samānodaka*-ship extended only to the 14th degree inclusive). As heirs sapiṇḍas, followed by *samānodakas*, had a firm place in the *śa stra*, though one wonders if the latter ever took in practice.

The Hindu custom of preemption, which long antedates the introduction of Islamic law, subject to which it was ignorantly placed by Anglo-Indian judges is a survival of *gotra* right. That preemption existed at Hindu law (nothwithstanding the absence of a special word for it) is proved by the text in the Mahānivāṇa-tantra cited to Macnaghten (see n. 21 above), and by the Vyavahāra-nirṇaya's citation of Vyāsa and Bṛhaspati and other texts at pp. 355 f. It is evident that a complete order of priority existed, and that even as between neighbours those lying to the east, west, north, and south had the right to preempt in that order; moreover the time within which each class of claimant might exercise his right was laid down. For these and other interesting details relating to preemption see forthcoming articles in *Adyar Library Bulletin* (Jubilee Number) and *Univ. of Ceylon Review*.

That preemption existed as a widespread Hindu custom is proved by the numerous statutes on the subject applicable to persons of all religions in the various former provinces and states; by some early cases such as (1972) I.S.D.A. Sel. Rep. 1 and n.; (1851) 7 S. D.A. Rep. 322; 11 Ind. Dec. (O.S.) 749; and by material on the Laws of Goa and Jaffna.

Amongst others entitled to preempt, a person of the same *gotra* could compel the vendor to sell to him rather than to a stranger in clan. How widespread this *adhikāra* over a *sagotra's* property was it is impossible to say.

Neighbours: *sāmantāḥ*

Normally there is no ground for supposing that neighbours would have *adhikāra* over one's property. There is no doubt however but that, with regard to immovable property, the owner of adjacent land had a right to participate in transfers). An ancient authority declared that their "consent" was needed to the validity of a gift or sale, and although commentators point out that this is only to facilitate the transaction and not to invalidate a sale, for example, made without it), the suspicion remains that the consent was genuinely required in such regions as retained the law or custom of preemption, for neighbours were amongst those entitled to preempt. This extremely contingent *adhikāra* would be far from valueless, and was undoubtedly a right in the nature of Property.

Dependency

While shares in joint family property were denied to disqualified persons, to females in some regions, to concubines and their issue (except in the cases of dāsi-putras of Sūdras). This peculiar rule has never been satisfactorily explained, it being usually assumed that the majority caste normally expected their illegitimate children by concubines to participate in family property so long as they worked for the family. It has been established that the Sūdra's *dāsi-putra* was not understood to have a birth-right in that property, the shareless ones were all entitled to maintenance out of the property). Aged parents, wife, and children were dependants of the first degree in that their rights attached to any property the son, etc., might acquire); others however were to be maintained out of specific property appropriate to their relationship to its holder. The dependants of a *pūrvādhikāri*, "predecessor", would have to be supported out of that *dhana* by the *uttarādhikāri*, the man who succeeded to it. These rights were valuable, though not transferable, and they served as an encumbrance hindering gratuitous transfers. Sanskrit authors apparently would not go so far as to class such rights as *adhikāras*, because of the almost complete lack of a right of initiative on the dependant's part; but we should, it is submitted, not be justified in failing to see in their position a very substantial right of enjoyment in property "belonging" to someone else. To this day in certain circumstances such persons have rights of challenging alienations by the owner of the property from which they must legally be maintained.

Limited adhikāras, in nine categories

The last class of *adhikāra* was upon the very borders of *adhikāratva* from the *śāstric* standpoint. We now pass to cases where the *adhikāras* were all clearly recognised as such, but, in contrast with concurrent *adhikāras* in respect of the same property, extended only over certain rights in respect of the property. Thus, while the husband's adhikāra in respect of his wife's *strīdhana* extended to the whole, but was limited by circumstances, and while the son's right over his father's acquisitions at Mitākṣarā law was limited to a right to prevent improper alienations, the cases which we are about to consider differ from these and their comparable cases in that the rights of the two parties are limited to *specific adhikāras* in respect of the same *dhana*, each excluding the other. The concurrence of *adhikāras* in sub-

sections iii—vii of this section extended over the whole *dhana*, neither *adhikāri* absolutely excluding the *adhikāra* of the other or others from proprietary activity with regard to the *dhana*; whereas all the instances in this subsection illustrate *adhikāras* which deprive the *mūla-svāmi*, "fundamental, original Owner", of certain *adhikāras* which he would otherwise have, or originally had, with reference to the *dhana*, thus reducing the total of rights which he might exercise over it. The wife's Ownership in her *strīdhana* was not diminished by her husband's capacity to call upon it in an emergency, and the nephew's Property in his inherited estate was not lessened by his aunt's right to be maintained out of it; but in all the instances that follow both *adhikāris* have limited rights, and each excludes the other from corresponding *adhikāras*.

(a) *Trust: nivi.*

It was long believed that if the trust existed in India it was confined to the position where shebaits managed the property of a *deva*, or a *mahant* or *maṭhādhipati* managed the property belonging to the *maṭha*, "college", of which he was the head. Gifts to Brahmans associated with dedications to deities, and the Brahmans' and others' appropriation of property so dedicated come under scrutiny. The first may be genuine examples of gift; the second is what is called *uttara-pratipatti* (the form *uttarāpratipatti* is found in Mss. of the *Sv. Rah.* and might be correct), a secondary or immediately susequent appropriation. Mitra-miśra, *Srāddha-prakās'a*, 8. It is possible that in dedication of lands to deities for the foundation of a shrine, temple, *maṭha*, the deities may be principal recipients, and the gifts may be called *deva-sampradānaka-dānāni*, but this is playing with words, and the truth of the matter is that the dedication to deities, or to the *maṭha* as the case may be, serves to give a secure properietary interest to the managers or superintendent, who can hide behind the deity, etc., where convenient, and direct the flow of the income to suit themselves. Some have even gone so far as to suggest that the Muslims brought the idea of the trust to India under the heading *waqf*. The *nivi* (or *nivi*), which typifies a type of proprietorial relationship, or which the *matha-dhana* and *devata-dhana* are only examples), shows that the relationship of legal owner and beneficiary was well recognised in Indian practice, though curriously enough the word does not occur in that sense in *dharmaśāstra* texts. It occurs in all the lexicons, where out sense appears in the synonym *mūla-dhanam*, "root, or capital fund" whence income would grow as a trunk from the root. And Kṣirasvāmi (about A.D. 1100), writing on *Amara-kośa* (edn. Poona, 1941, p. 218, śloka 80) says *niviva parahaste 'rpyamāṇatvāt*, "because it is dedicated, or entrusted, into the hand of another, like a *nivi* (waist-knot)" The idea is that just as the woman's girdle, which belongs to her, may be loosened only by selected hands and for limited purposes, so the fund must be treated with respect and only its limited profits may be enjoyed by others than the owner. He goes on to refer to other meanings, and adds that in this sense *nivi* means a fund from which profit is obtained, and thence the word may be used actually for the income or profit is obtained, and thence the word may be used actually for the income or profit itself, i.e. interest. It is precisely in this sense that the phrase *nivi-dhanam* appears in some South Indian inscriptions. The

word takes its origin in the knot of a woman's lower garment, in which she kept valuables, and the touching of which on the part of a stranger amounted to criminal assault. The root means "to bind"; the result is that here we have an unsuspected analogy with Indo-European ideas of property being "tied up". A full discussion of this word, the origin of which was discovered by the present writer, will appear elsewhere. On the *nivi* as part of a garment, Amara and other lexicographers are very full, and an excellent sartorial description is given by G.S.Ghurye in *Bull Decc. Cooll. Res. Inst.*, VIII, 1946—7, 162—6. That women kept valuables there is more than likely, for they still do; and Mit. on Yājn˜. III, 258, trans. p. 275, seems to confirm it. The MBh. and Yājñ refer to the "assault" aspect of *nivi*. On etymology see hesitating opinions in T.Zachariae, *Beiträge z. Ind. Lexicog.* (Berlin 1883), 28; M. Mayrhofer, op. cit., 174—5. It is not mentioned by Kane. It appears in Gupta and other inscriptions, and is commented upon by S.K.Maithy, *Economic Life of Northern India in the Gupta Period* (Calcutta 1957), 17, 27. Tamil equivalents are *mudal keḍāmaiy* also *vāḍākkaḍan*. It is often called appropriately, *akṣaya-nivi*, "unwasting capital fund". The word is used in senses also which do not concern us, namely "stake", "wager", "earnest-money", or "security"—all examples of a specific sum or valuable object which is not intended to pass absolutely into the Property of the person to whom it is consigned, and which is immune from diminution at his discretion.

Our *nivi* is found in inscriptions with reference to religious endowments, but there is no reason to assume that it was not used also for secular purposes, so long as they were of long duration. A capital fund was placed upon permanent deposit with a "banker", for example a merchant guild with perpetual succession and common funds, upon condition that a part of the income from investment of the fund should be paid over to the beneficiary of the *nivi*. This was an excellent method of providing for periodical worship of a deity, or the maintenance of some long-lasting object of charity. The depositary's title to the capital fund, which never diminished, was nearly that of full owner, except that he could not alienate it so as to impair its capacity to provide the income stipulated. We should notice the "deposit for use" (IV C viii [i]) which was a comparable type of transaction. The latter lacked the essential feature of a beneficiary's right (for any interest on the deposit would normally be payable to the Owner or his assignee), and was subject to the Owner's right of withdrawing the equivalent in value of the deposit subject to agreement. Here, if the depositary failed to pay over the income he could, it seems, be forced to refund the capital sum to the depositor or his heirs. The *adhikāra* of the beneficiary did not extend to the capital fund itself, but only to the recurring income: the managers of the temple, etc., would deal with the "bankers" on that footing and would not be entitled in any way to interfere in the investment of the fund. The *adhikāra* of the "bankers" extended to investment of the fund, and enjoyment of profits beyond the amount stipulated for in the *nivi*.

(b) Trust or lease: kuttā.

Just as mortgage is treated in the *śāstra* under "pledge", so leases appear under "hire". To the Indian jurist the hire of a house or garden was much the same as the hire of a man's

services or of a horse or bullock. A special word for lease does not exist, though the hiring of land had quite special features and involved agreements which could not be paralleled completely in wages or hire of an animal or a tool. From a Dravidian and not a Sanskrit source appears the word *Kutta*, which is used to indicate a type of trust and a class of lease, and in fact it is the only word for lease in the only Sanskrit law-book which uses it. A special word for rent (*stoma*) exists, but this curiously is not used in connexion with *kuttā*. An ancient confusion between the ideas of mortgage and lease, paralleled in other systems, hindered the clear development of rent in agricultural leases and leases of the right to collect land-revenue, as distinct from rent of a house or the like.

In the *kuttā* the *kauttika*, or tenant, estimates the yearly value of the land, trees, or other source of profit, such as the right to collect revenue in a particular district, and either pays a sum to the owner, or guarantees to pay him money or give him money's worth at a stipulated date. The *adhikāra* of the Owner extends to the land in every respect except that of taking its income or profits during the period in question; the *adhikāra* of the *kauttika* extends merely to the profits. Rules to protect the *kauttika* against loss seem to have been devised, but the account of them in the unique text is not entirely satisfactory.

The kuttā was frequently such a lease as would terminate with the end of the agricultural year; but it could also involve the element of trust. It was one method of conveying the perpetual ownership of the property where the Owner's debts and funeral expenses and *śrāddhas* could not otherwise be guaranteed, the only security, upon which he could induce an insurer to cover him in those respects, being his land. The *kauttika* took possession on the death of the *uttama*, or grantor of the *kuttā*, and held the profits subject to the liability to meet the expenses which could only have been estimated at the time of entering into the *kuttā* agreement. For failure to pay he could, no doubt, be dispossessed by the *uttama's* heirs. The debtors of the *uttama*, and persons to whom he had notified his intention that money should be paid from his estate for his spiritual benefit (or that of any assigns of his, such as his parents) were in a position analyogous to that of beneficiaries under an English trust, or legatees under a testamentary disposition, for which in fact Hindu law had no precise equivalent. It is imposible to enter here into the problems relative to the growth of testamentary power in India from the commencement of foreign rule. For many years, and indeed in general until 1956, Hindus had no testamentary capacity which would prejudice the interests of coparceners or dependants. It seems, however, that when English and French courts granted probate of wills and supervised the payment by executors of legacies in the case of the estate of a Hindu they were by no means performing as revolutionary a function as many *śāstris* at the time suggested.

(c) Usufructs and bhogopayogi svatva.

The *dharmaśāstra* is not clear as to whether what we know as usufructs, and what was in general called *bhoga*, was, as a category of *adhikāra*, isolated and specially named according to the type of profit or its source. Usufructuary mortgages were the regular type of mortgage

for the greater part of the period and are still much in evidence in Indian practice (IV C viii [h]). The grant of land simply for enjoyment, and without any right of disposition except with the grantor's consent is evdenced in inscriptions, through it is by no means common in surviving examples. It must however have been very usual as a method of settling the claims of maintenance of aunts and step-mothers and other relations who preferred to live separately. Separated wives would similarly prefer to have such arrangements made for them. In such cases the usufruct would belong to the person provided for, while the *adhikāra* of sale, gift, and mortgage (in non-usufructuary forms) would remain with the Owner.

The jurists are familiar with what they call *bhogopayogi svatva*, or "Property appropriate to enjoyment, or possession, and this is a term which approaches "usufruct" fairly closely. Its significance will be explained in a later section (IV C viii [i]).

(d) Easements (servitutes).

There is no part of the *dharmas'āstra* which is dedicated directly to this topic. That easements existed and were transferable proprietary rights is certain. They are compendiously treated under "boundary disputes". The right of way as an impartible object of *svatva* is specifically mentioned. Rights of support, of passage, to use wells, to drive cattle, to take earth, to send down water, and to be afforded privacy certainly existed as types of *bhoga* in respect of the land of others. There is good evidence that *adhikāras* which involved physical contact with the soil had specifically to be transferred at a sale, etc., as they did not pass automatically with the soil itself: but we do not have enough evidence as yet to be sure whether this was equally the case with *adhikāras* which X had over the land of Y, when the transfer of his land was made by X. That there was in general a distinction between an easement and a licence in classical Hindu, law, seems likely from what we know of their conveyancing practice, but further research is required.

The ownership of trees did not necessarily pass with the ownership of the soil. Trees were commonly used to mark boundaries. The fruit of trees near a boundary belonged to the owner of the tree; that of trees on a boundary belonged to the land-holders jointly, and not according to the proportion of roots in their respective lands.

That there were purely customary *adhikāras* existing in favour of castes, sub-castes, families, or lineages, authorising them to pass, take, or deport themselves in a particular way on land which they did not own, and without reference to any land they might own at the time or to any limit of time, seems certain. These were rights which were classifiable as *adhikāras*, but they were neither *servitutes praediorum* nor easements or licences as understood in English law. Customary rights to hold a market, for example, are of course common in all medieval systems: and just as such rights both in the West and in India were commonly traceable to a royal grant, so such and similar customs were often treated in India as presumably traceable to a lost grant where one could not be produced. Attempts to forge authority for customs are well known in India.

(e) Legal charges: nibandha.

As *nivi* created an *adhikāra* over the income, or part of the income from a capital fund, which was itself inalienable, so *nibandha* (sometimes inadequately translated "corrody"), which has a strong resemblance to *nivi*, created in the *nibandhi* an *adhikāra* over a proportion of the profits of some source of production. The main difference between the two forms of providing for dependants, proteges, etc., was that the *nivi* provided a permanent endowment, while the *nibandha* could be terminated by, *inter alia*, a change in the constitution of the source of profit. For example, if the *nibandha* was granted by a governor in these terms, "3 *paṇas* a day out of the income of the customs-post situated at X village", any fresh governmental orders regarding the situation of the post or the liability of goods to customs duty might affect the availability of the *nibandha*; and this might be true even where the *nibandha* was granted for religious purposes, though these had a peculiarly tenacious character. Similarly, if the king granted a monthly salary out of the proceeds of a mine, he was not incapable of reassigning the mine free from the *nibandha*. However, a *nibandha* was every bit as good property as land, and though naturally distinguished from it, it has been treated for many purposes as if it were impartible immovable property. *Nibandhas* created by private owners of a source of profit, such as a betel garden, were in a somewhat different position from official or royal grantors. In the former cases the grantor having diminished his own *adhikāras* in respect of the source of profit could not transfer that source free from the burden. Being heritable the *nibandha* was useful in that it provided an income without any necessary connexion between the land-holder, or exploiter of the source of profit, and the owner of the *nibandha*, who could collect his dues through an agent. For an instance of the creation of a *nibandha* in favour of members of one's family out of inalienable property, see Derrett, "An example of tax-evasion in mediveal India", B.S.O.A.S., XIX, 1957, 162 f. *Nibandhas* were distinguished from *bhū*, "land", and *dravya*, "movable", possibly because of their impartibility (and therefore the need to collect through an agent): Yājñ. II, 121 = *Dh.K.* 1175 b; Kātyāyana at *Dh.K.* 1228 b. The curious and controversial word *yogakṣema*, which in medieval times seems to have meant "livelihood", and so "grant for livelihood", and the like, K. iii, 588—9, seems often to have been a *nibandha*. See also the like, K. iii, 588—9, seems often to have been a *nibandha*. See also Derrett, "Income-tax...and the *nibandha*", (1961) 63 Bom. L.R. (J.) 17–23. The transferability of the source upon which the *nibandha* was charged gave it, as a method of provision for a third party, a great advantage over the *nivi* from the point of view of the owner of the source, while it diminished the security of the *nibandhi* relative to the beneficiary of a *nivi*. The source might come into incompetent, dishonest, or unlucky hands, while the *nivi* in the custody of medieval "bankers" was as safe as any property could be.

The survival of the *nibandha* into modern times has its own interest. Anglo-Hindu law has recognised it without any attempt to distort it; but there is room for suspicion that institutions have been categorised as *nibandhas* which perhaps were not really such from the point of view of traditional jurisprudence.

(f) Conditional transfers

The remarkable freedom of contract open to Hindus accounts in some measure for the lack of precise definition in *śāstric* texts of such useful institutions as the *nivi*, *kuttā*, easements, licences, and even *nibandhas*. Given that a contract was not unlawful, was entered into by a legally qualified person in circumstances which did not arouse suspicion, and in terms that were not themselves inequitable, any contractual term (*paribhāṣā*) would serve to pass Property, and it could effect this at some future time, and could even *divest* Property from a certain moment and cause it to revest in the transferor or his heirs. A wide range of customary transactions were sheltered by this broad contractual liberty, and jurists felt it unnecessary or undesirable to particularise.

Transactions subject to implied conditions were common. The topics of resumption of gift and annulling of sale are too large and involved for detailed treatment here, but they evidently survive from an age when instantaneity of decision was not insisted upon, and transfers, unless accompanied by elaborate solemnities, were commonly subject to implied suspensive conditions which would weaken with lapse of time.

The general proposition that transfers might be subject to a condition precedent ("He shall become owner when he marries X") and/or a condition subsequent ("He shall own this until he dies, until he marries, until he leaves the village, until he becomes disqualified to perform his professional functions") shows that in respect of the same *dhana* two mutually exclusive *adhikāras* might exist: A would have the *adhikāra* of possession while B had the *adhikāra* of acquiring possession at the stipulated time (which might never come) and of hindering transfers in defiance of his conditional title; or B would have the *adhikāras* of possession seemingly indistinguishable from full ownership, while A or his heirs would retain the *adhikāra* to recover possession should the conditions of transfer be broken or should the suspensive condition become operative. The latter phenomenon is of great significance in view of what has been done during the British period to introduce and develop the law of testamentary disposition amongst Hindus. The bequest subject to a condition subsequent, of a life interest, and indeed of vested and contingent remainders generally has entered Anglo-Hindu law under a cloud; but it seems that the English "innovations" were justified. Whether the power of appointment was similarly justified seems open to doubt. For the basic proposition that bequests must be assimilated as far as possible (subject to statutory amendment) to gift, and the difficulties it created in Anglo-Hindu law.

Instances of grants on condition are sufficiently common to make the concept of conditional Property clear. Land is granted for services to the village, and if these services are still required and they cease to be provided the tensure is forfeited. Kadamba inscription of A.D. 1107 at Goa, the donees took common property with a right to share the income, but without a right to sell their shares—they were all professional people and the shares were in payment for their professional services. Deserters abandoned their shares, and could be fined if they attempted some time afterwards to reoccupy them. The entire residential body, with a particular voice to the neighbours, could introduce a new member

to take a deserter's place. Lands are granted for the maintenance of a branch of the family—if the branch dies out the land reverts to the main branch from which it came.

(g) Land tenures other than (b) and (h).

The commonness of leases of houses and gardens, and agricultural and revenue leases is beyond question. Their terms, where they were not based upon objective appraisal, as in the *Kuttā*, seem often to have been customary rather than economic. Tenants established the right to renew their leases, and where the landholders, e.g. Brahmans, would never cultivate the land personally, the tenantclass developed a status which was dependent only in name. Impoverished cultivating classes have been known to transfer their lands to be cultivated by landless cultivators at rates which were not unadvantageous to the latter. The pattern of land-cultivation agreements was and remains extremely complicated and is beyond the scope of this paper, but jurisprudentially it is important to note that the Owner of certain lands was often in the situation of never having had possession of it for generations, taking perhaps only a small proportion of the net profits, while his relationship to the cultivating tenant is traditionally described in terms of that of mortgagor to mortgagee.

Instances of direct Owner-tenant relationships, in which the former stipulate for a half or more of the net produce are, on the other hand, readily avaiable, and have less comparative legal interest.

(h) Pledge, mortgage: ādhi.

We have already considered summarily the question of usury and rates of interest. Where physical security is offered for repayment of loan and interest the rate of the latter is invariably lower. Where the money-lender is himself a cultivator or can easily and cheaply hire reliable cultivators a favourable rate of interest can be obtained by granting a usufructuary or possessory mortgages were inconvenient for substantial landholders who needed temporary accommodation, and were inconvenient likewise for professional moneylenders who dwelt in towns and suspected that any cultivators they hired would favour the Owner more than the lender. The development of refinements in the basic propositions of pledge were therefore inevitable. About loans secured by mere acknowledgements little is known.

The rules relating to mortage were based upon those relating to pledge, and one word, *ādhi*, served for both. The basic rules found in the *śāstra* set the background against which individual contracts are to be understood. *Adhi* implies that the object is "placed within" the power of the lender. There were two types, *gopya*, "to be kept", and *bhogya*, "to be used". A *bhogyādhi* provided interest out of its produce, and when the interest reached the maximum applicable (IV B ii) the lender's right terminated and the Owner's *adhikāra* of possession returned to him. If in such cases as this the Owner could not be traced the law provided means for his or his heirs' protection. This right of recovery upon the accumulation of interest to the maximum might be waived by agreement. Profits might by agreement be credited so as to reduce principal as well as interest, the "self-reducing" mortgage being

called *kṣayādhi*, "wasting mortgage", for the mortgagee's rights diminish progressively; or sapratyayādhi, "with-credit mortgage", as opposed to the reverse, which was an *apratyayādhi*, "non-credit mortgage.

A pledge or mortgage could not be transferred by the pledgee or mortgagee by gift or sale. Medhātithi says that *anvādhi*, or sub-mortgage to a third party, is illegal. Kullūka, however, commenting upon the same passage in the Manusmṛti, says that submortgage is usual. The Mitākṣarā, which antendates Kullūka by about a century and a half, accepts that a *bhogyādhi* at any rate is not be sub-mortgaged. However, by the 14th century the somewhat doubtful *smṛti* authority Prajāpati is alleged to provide details about the deed of sub-mortgage implying that the consent of the Owner was essential. The equally elusive Bharadvāja says that the mortgagor's consent was essential unless the mortgage was to be liquidated. Mādhava, commenting upon Parās'ara and referring to Prajāpati's text, comments that the *bhogyādhi* can be sub-mortgaged freely after the maximum is reached without redemption, but only by agreement prior to that time. A surviving precedent for mortgage deeds shows that the mortgagor agrees that if at any time the mortgagee is in need of funds and he cannot redeem on application, mere notice to himself is sufficient before the mortgagee may sub-mortgage. The various terms for "mortgage" have yet to be critically examined; their curious "prākritical" forms show that the learned legal language (like Latin in mediaeval Europe) admitted many local terms from regional languages, which might or might not historically relate back to classical models. Since the passage has been misunderstood by A.K. Majumdar, op.cit., 277, the actual text is of interest: *atha kadāpi vyavahārakasya* ("transferee") *bhidāyāṃ jātāyāṃ drammā vilokyante, tadā dhāraṇikam* ("mortgagor") *ākramya dramma grāhyāh. no vā* ("in default of which") *dhāraṇika-viditam anya-vyavahāraka-haste patram aḍḍāṇakaṃ datvā drammā grāhyāh*. It is of interest to note (i) that the mortgagee is called *vyavahāraka* (which literally means no more than "the party with whom the transaction takes place"), and this is in keeping with the fact that the mortgage is not (it seems) with possession, but only by written deed of mortgage; (ii) the submortgagee envisaged will take the deed, and it is possible that, after paying the mortgagee, he will be substituted into the place of the mortgagee, and the mortgagor can redeem directly from him; (iii) notwithstanding that this is a long way from the ancient possessory mortgage, the transaction still bears the name *aḍḍāṇaka*, which looks like a Pkt. form of ādhāna-ka, which is evidently an adjectival formation from *ādhāna*, a parallel form with out Skt. *ādhi* and *ādhamana*. The mortgagor's consent seems to have been needed in the first place to the mortgagee's right to submortgage.

In the case of a *bhogyādhi* redemption might be made at any time; in the case of a *gopyādhi* the moment was that at which interest equalled principal, or within 14 days thereafter. Premature redemptions, which worked against the interests of professional moneylenders, were discouraged. A very special type of mortgage, called *satyaṅkāra*, permitted the amount due to rest at the principal plus interest of the same amount, with perpetual right of redemption, which of course could be exercised by the mortgagor's heirs. Whatever the basic law on the point, the right of redemption could be limited by agreement, and the same precedent-book shows that it was normal for the mortgagor to

agree that his right of redemption should cease, and that after the fixed date the entire Property would pass to the mortgagee "even if I come with the lump sum with double interest. It is important to notice that the "equity of redemption" as it would be called in English and Anglo-Indian law, hovered in the background of many transactions which, upon the face of them, seemed to exclude its possibility. The grave abandonment of a right to redeem which appears in mortgage deeds, and in deeds of conditional sale, is paralleled by similar statements in deeds of absolute sale (the same feature has been found in Ceylon, India, and the ancient Near East, and has caused some embarrassment to modern legal interpreters). In *Lekhap.*, p. 38, line 9, *dipotsavād ūdhvam+* (after the festival which is fixed as the redemption day) *pratipad-dine granthi-baddhair api drammair* ("even with the coins tied up in a knotted cloth") *dhāraṇikaḥ choṭayituṃ na labhate* ("cannot take—the document?—for cancellation"). In such circumstances some mortgagees would be missing on the redemption-day (as in Jewish experience) and provisions were made for either (i) redemption by public abandonment of the money, or payment to the mortgagee's heir (however remote); or (ii) public appraisal of the amount owed to the mortgagee with a view to its being credited to him as a regular interest-bearing debt. K. iii, 435. The right to "redeem" lands forcibly sold to pay revenue demands and possibly bought at a slight undervalue remained for three generations: K. iii, 495. When all property was confiscated to the king, he had the right to call in all mortgages or terminate mortgageagreements: By the commencement of the British period these agreements were established customarily, and a most interesting struggle began between judicial elements, some desiring to give effect to the terms of the agreements and ofters (which were eventually victorious) desiring to introduce the English "equity of redemption", for after all, the mortgage was, whatever its form, a security and nothing more. The same might be said of all the conditional sale agreements which came under the same Anglo-Indian supervision and adjustment.

If the pledge was not redeemed in accordance with the law and the agreement, the right of foreclosure did not exist unless it was mentioned in the agreement, as, for example, in the precedents cited above, or in the conditional sale agreements, which certainly existed by the 12th century at the latest. A right of sale was implied by law, and the procedure followed, though it must have varied with locality and period, seems to have secured the interests of lender and borrower alike, while providing (through the public character of the sale) a safe title in the third-party purchaser. Government auctions of land for failure to pay revenue and of revenue assignments were well known, and there is no reason to suppose that they differed in character markedly from the court-auctions of private property. That a "reserve price" was fixed, below which the property would not be sold, seems clear.

We have spoken of sub-mortgage. Could the mortgagor grant a gift, sale, or second mortgage? That he could give and sell subject to the mortgage is beyond question. But the problem of the second mortgage concerns us closely. If he could not grant a second mortgage, as seems to have been the case, the implication is not that the hypothec (to which we shall come below) was incapable of rising above restrictions obviously applicable where the only mortgages are possessory, but that the mortgagor in parting with the *adhikāra* of *ādhi* (more correctly *ādhamana*, for the process of mortgaging) had so restricted (*pratibaddha*)

his *svatva* that that *adhikāra* could never be exercised until redemption restored it again. However, it must be admitted that there are two provisions which suggest that a second or subsequent mortgage was not a legal impossibility. Firstly, we find mortgagors agreeing that they will not transfer their land during the pendency of the mortgage; secondly, we find a provision in the *smṛtis* that he who pledged or mortgaged to two successively committed a penal offence. This suggests that the first mortgage might be valid in practice without possession, in spite of rules which exhort the mortgagee to take possession, and also that the second mortgage was penalised because it was or might be a fraud, and not because it would be ineffective. Yājñavalkya and Nārada are against the possibility of a second mortgage being valid without possession, but the relation of their rules to our problem is not clear. We are told that if a mortgage, sale, and gift occur on the same day (and it is assumed possession is not given to any transferee) the donee takes 1/3rd, the mortgagee and purchaser sharing the remaining 2/3rds in proportion to the consideration paid by each. This suggests the intention of the *svāmi* is to be construed in such a way that the mortgage does not affect superior *adhikāras* created simultaneously with it; but does not suggest that the *svāmi* retains any right of using the mortgaged portion again as a security.

If this is correct, and land once mortgaged could not be mortgaged again during the pendency of the first mortgage, there existed an excellent reason for the development of the hypothec, for which, it seems, the word *bandha* was used. The possibility of non-possessory mortgages would enable those penalised second mortgages to take place in practice. The rule of priority of mortgages according to the dates of giving possession, if any, also supports the existence of hypothecs. Ambulatory pledges of "all property" certainly seem to have existed from very early times, for we have the question whether future assets could be pledged. Customary pledges covering all that a man might have at the time of redemption or "foreclosure" may well have existed notwithstanding the rule that non-existent assets cannot be the subject of a gift or sale. The difficulties to which any such custom must have led jurisprudentially are easy to understand.

In this connexion it is important to notice the transactions *uktalābha* and *avakraya*, which, while they masquerade as sales, show signs of really being types of mortgage. Under the *uktalābha* A borrows less than the market value of a plot of his land, promising to return the money on a certain day; if he did not he agreed that his *svatva* would pass to the lender. The word *avakraya* is apparently used in more than one sense, but an important use was for the transaction by which, apparently, *B* paid less than the market value of a piece of land on condition that, if it were not returned to him (presumably with interest) within a very long period, the sale, which was conditional until then, would become absolute. These precedents for the modern conditional sale agreements have never been scrutinised, and are plainly instances of hypothecation.

A pledge or mortgage capable of redemption had to be kept or used with the same standard of care as a deposit. But these provisions also (IV C viii [i]) could be waived by the pledgor or mortgagor, and we find conditions in the precedent-book which would be

regarded as oppressive even in modern times. It is to be observed that right up to modern times all necessary repairs could be made to the property by the mortgagee at the mortgagor's cost: Rāmji (1964) 1 B.H.C.R. 199, 204. That the mortgagor could not recover from the mortgagee when the latter allowed the property to fall into disrepair, to catch fire, and so forth seems to be contrary to the basic principles of *ādhi*, but was evidently stipulated for. On the other hand, the mortgagor was entitled to stipulate that the usufructuary mortgagee should not use the buildings for purposes which would render them uninhabitable (or uninhabitable without great expenditure): In case of loss of the security through latent faults or Act of God, etc., it was possible for the lender to obtain substituted security out of other property of the borrower.

(i) Bailment (commodatum, etc.)

Bailment raises problems of special interest for our study. All forms of bailment do not necessarily reproduce the same problems, but in general it may be said that the bailee obtains in the *dhana* bailed to him a *svatva* mutually exclusive of that of the bailor. The number and character of his *adhikāras* will vary with the circumstances, but his own status with relation to the object is similar in kind with that of the *svāmi* or *mūla-svāmi*, the bailor. It is of interest that when Indian jurists came to examine the *adhikāra* of the bailee, their discussion of the attribution of *svatva* to him centres on the bailee for use (below, and V i). This is comparable with the Roman distinction between the *mutuum* and the *commodatum*, but there is no evidence that Indian jurists denied that a bailee for custody or a bailee for work had an *adhikāra* in the goods. On the contrary one at least contemplated a washerman pledging his customers' clothes. Thus in relationship with the third party and within the limited *adhikāra* the goods were the bailee's *sva*.

Deposits with "bankers". for use, to earn interest, have been mentioned (IV C viii [a]). Deposit in general is considered a relation *uberrimae fidei*, for people used to make deposits as they used to bury treasure, in order to evade the claims of *dāyādas*, creditors, revenue-authorities, and the course the attentions of thieves. To take a deposit was to assume a gratuitous responsibility, and was a test of friendship, hence we have *nyāsa* and *pratinyāsa*: people made mutual deposits. Vocabulary becomes somewhat vague. *Upanidhi*, "minor *nidhi*", and *nikṣepa* are used comprehensively for deposits, covering also material deposited for work to be done on it, as for example clothes deposited with a washerman. *Silpi-nyāsa* is material deposited with a craftsman, as gold with a goldsmith for fashioning into an ornament.

The deposit must be returned at request (subject to the rights of those who have worked on them in appropriate cases) curiously makes no reference to any lien in favour of the craftsman over the material for the price of his labour. As in so many cases the rule (which must have existed) is buried in another chapter of law, and that too tacitly. Breach of contract was a title of law, and, provided that basic conditions of validity of contract were complied with, any agreement would be enforcible, subject to "criminal" penalties. We are told in Kātyāyana, 603—4, that the craftsman must pay the price of the material or article if he did

not restore it in accordance with the agreement: naturally the craftsman would not agree to restore the article unless terms were agreed as to payment for the work done. One might expect to find a rule providing for a presumption that payment was to be made on delivery, unless otherwise agreed: but this would not be reasonable in a country where payment was less usual than mutual services, or services compensated for once or twice a year. But before witnesses if the deposit was made before witnesses, and not before required, nor to co-owners, unless the depositor has died, in which case the depositary must return the deposit to the heirs generally and not merely to one of them. If not returned on demand interest is payable. A sealed deposit, *upanidhi*, must be returned sealed. Unsealed deposits bear the common name *nyāsa* or *nikṣepa*, words which cover many sorts of deposit other than those which act as security for loans; but any sort of deposit if not intended for use, and used without the depositor's permission, will carry interest.

Yācitaka is a loan for a festive occasion; *anvāhita* a deposit taken in connexion with a transaction between two other parties (an example would be paripaṇa, "wager"); *avakrita*, as the name indicates, is property lent for reward, on hire. The rights and obligations of a *pāla* "herd" as in "cow-herd", are similar to those of a depositary, with appropriate elaborations.

The duty of a bailee was strict. He was free from obligation if he kept the property under the same conditions as like articles of his own. It does not appear that conditions of bailment for custody could be made more severe by agreement. Since the bailee was liable to the bailor for damage or loss due to his negligence he must himself have had a remedy against the thief or offender who had caused the loss. This implies a title, and the difficulty in Anglo-American law, concerning the "special property" of the bailee, seems not to have worried Indian jurists, who recognised the bailee, as an Owner, though in an inferior measure as compared with the *mūla-svāmi*, the bailor or his successor in title.

Svatva can appear in two forms besides the undifferentiated *svatva* which suggests the maximum relevant number of *adhikāras*. *Bhogopayogi-svatva* (IV C viii [c]) describes the *adhikāras* of a depositary for use, or a mortgagee in possession. *Rakṣopayogi-svatva* is the Property of one whose *adhikāra* extends only to protection of the *dhana*. An example would be the owner of property who has made a gift or dedication and the donee or managers of the endowment are not in a position immediately to accept and take possession. Such is a *paripālaniyatva-rūpaṃ svatvam*, "Property that has the form of conservation", to use the expression which characteristically sees Property not as an abstract "right", but an actual or potential function. Jagannatha discussing the bailee's *adhikāra* and Vijñāneśvara's position on the question says that the view that the borrower for use is *svāmi* must be admitted, but this is an *apakṛṣṭa-svatva*, "subordinate Property", the *svāmi's* original *svatva* remains *aviruddha*, "unopposed", and an alienation of the object borrowed can be made by the borrower with the *svāmi's* consent: hence the *smṛti's* prohibition of alienation of a borrowed object. The consent of the *svāmi* then completes the *yatheṣṭa-viniyoga* which the borrower acquires (for *yath-* see VII i). Jagannātha says, further, that a view current in his day, of which he plainly does not disapprove, allowed that those whose interest in an object, such

as an *ādhi*, can be quantified in terms of debt, etc., or whose *adhikāra* extends to the whole *dhana* by reason of a deposit, and the like, may create independently an interest equal to their own. The antecedents of this rule are not clear, and it is not impossible that it may owe something to English influence. His own attitude is demonstrated a little prior to this passage where he declares that *yācitaka* is mentioned separately from *nyāsa*, *anvāhita* and *ādhi* in the text explaining what should not be alienated because the last is connected with debt, and the *yācitaka* possesses *asvāmi-vyāpāra-paratantratva*, "the character of having transactions with it on the part of a non-*svāmi* non-independent", i.e. from the owner's point of view transactions entered into by one who does not happen to be the owner (the borrwer) are *paratantra*, outside his personal control. We might go further and suggest that what Jagannātha understood by the *adhikāra* of the bailee in the case of *yācitaka* was a right of use impliedly authorised by the owner, and that the latter was estopped from denying his right to dispose of it as he thought fit by having held himself out as lender for use. And this peculiar *adhikāra* he quite rightly calls a *svatva*, subordinate to the *svatva* of the owner who had parted with an *adhikāra* temporarily.

Partnership

On this subject the *dharmaśāstra* is well supplied with rules, which no doubt applied in practice with reference to the guilds and commercial partnerships between individuals, or more commonly families, with which India has been familiar throughout history. The earliest recorded instances are partnerships between priests of different classes formed for the purpose of performing sacrifices for wealthy patrons.

The detailed rules prescribing methods of division of profits amongst those whose contributions of capital, skill and other forms of enterprise differ are beyond our scope. However, in all instances of *saṃbhūya-samutthāna*, "joint enterprise", partnership", the rights and responsibilities of partners extend to the whole assets, though it appears that there was a system whereby express authorisation was required to empower any unusual step to be taken by any member in order to bind the whole. Though profits might not correspond to the share originally contributed (special provisions are expressly allowed by the *śāstra* for partnerships of traders, husbandmen, thieves and artisans), it seems that each partner was entitled to one vote, for in the context of partnership deliberations, which remind us strongly of limited liability company shareholders' meetings, we have the only genuine instance of the exercise of decision by majority, which is nomally anathema to Indian traditions. That a partner might be impliedly authorised to bind the whole partnership assets by his acts within the ostensible scope of activity allotted to him is not stated in our texts, but it is difficult to see how business can have proceeded without such provisions. Property was owned by the partnership, apparently, much as in the case of ancient guilds, under the partnership name. This is an inference drawn from modern usage, according to which a firm trades under a name such as Jivan Das Gokul Das, an individual partner having one of these names, or having had one of these names within living memory. For an example of diffiulties raised by the names of Hindu joint family businesses. Acts against

the interest of the partnership or done negligently without the partners' consent must be compensated for by the partner out of his private assets and it would seem that although there is no trace of the third party's rights against the partner's private assets, his remedy, if any, against the other partners should be capable of being worked out by them in turn against the delinquent partner. For fraud of the partnership the partners were entitled to deprive the fraudulent partner of his share of profits, and to expel him from the partnership.

The essence of the institution is pooling of assets and skills, in order to share profits. What we know is sufficient to detect *adhikāras* on the part of each partner in the shares contributed by the others and in the earnings made therefrom. The differences from coheirs' interests in an undivided estate are plain. Incidentally it will be observed that *dāyādas*, because of their jointness of property, cannot act as sureties for one another, nor enter into mutual transactions such as partnership-agreements. The partners, however, preserve a special status sufficiently removed from that extreme position for it to be possible for them to act mutually as sureties. While the very essence of their relationship to one another lies in the capacity to contract. It is this difference which makes it desirable to distinguish partnership from the various concurrencies of *adhikāras* described in IV C iii—vii and from the limited *adhikāras* described in the nine categories of IV C viii. Partners and *adhikāris* with regard to each other's shares, and yet confined, as to their *adhikāra*, to rights of dealing with the whole, whilst acquiring individually a fixed proportion of the income.

Sleeping partners were known, who contributed nothing but capital, and it is possible that this was a feature of the institution from the beginning.

Illustrating the extent of the partners' *adhikāras* over the shares of other partners, the rule regarding succession to such share places the partners of a deceased partner in the order of heirs midway between near and distant kindred.

x. *Public property*

A concurrence of a still further type is to be seen in the co-existence of *adhikāras* of individuals in respect of *dhana* belonging to the whole or a great part of the public. This is not specifically *gaṇa-dravya*, *sādhāraṇa-dhana* might perhaps be correctly used of the "common property" of the public in tanks, paths, shelters, and so on: but in those contexts the term *sādhāraṇa-svatva* would go too far. There is a distinction between *asvāmika-dhana*, like river-water, or fish in a river (IV Ci), and property in which all people have *adhikāras* but of which no one can ever become *svāmi* by any act of appropriation.

When an individual or family "released" a tank, or a well, or some other facilitity for the public's use they did not destory their own *adhikāras* of enjoyment, though they created what appears to have been the equivalent of an irrevocable general licence. An outright transfer was impossible because of the absence of a definite body on whose behalf acceptance might be made. Pariṣad means a caste gruop or committee made up of persons with a common qualification, commonly a Brahman committee assembled to deal with

some problem or accomplish some task. In payment for their services, or to secure their favour, a gift might be made to them. It may be made to one with instructions to distribute it; but a collective gift to all was apparently considered inoperative. The matter, which is evidently one arising in *Mimāṃsā*, deserves fuller consideration. The author refers to the text as part of the *pariṣad-adhikaraṇa*. It has not been identified, but in the absence of skilled *mimāṃsaka* advice the reference appears to the writer to be to Sab. on J.X, iii, 50—52. JhāS. 1774—5. The rule there laid down is that the *yajamāna* must make his gift (which is expressly described as a gift for "hiring" and not purely gratuitous) to the individual priests according to their shares, and these may be unequal (Sab. on J. X, iii, 53—55, JhāS. 1776—7), but not to the group collectively: for the contract by which the priests were employed was with them individually, for it is impossible to make a contract with a group. Perhaps the author of the *Sv. Vic.* thought the principle capable of extension to any situation where rights were to be transferred to a group.

It is of interest to notice that Medhātithi uses the expression *sarva-sādhāraṇa-viṣaya* when he wants to indicate "public property". Manu says that one of the eightfold group of vices which beset kings on account of *krodha* (approximately, "anger") is *asūya*, "discontent", "envy". Medhātithi appears to illustrate this condition by, "terminating (or "abridging") the commonness (*sādhāraṇya*) of public property". Such property would naturally be parks, commons, and lakes, over which the public had rights of enjoyment.

Such *asvāmika dhana* could not be protected in the same way as any *sa-svāmika-dhana*. Accordingly it was the duty of the king to punish interferences with common rights, and there are rules (too numerous to list) which tend to the protection of the cleanliness, efficiency, and safety of public amenities.

EXTERNAL SANDHIS OF THE MAITRAYAN1 SAMHITA

L. v. Schroeder in the introduction to his edition of the Maitrayani Samhita (MS) mentions four peculiar external sandhis of the Maitrayaniyas:

(a) A final unaccented *-e* (not *pragrhya)* and *-as* become *-a* before an accented vowel (not a-), e.g.:

iti > adadha iti; samidhas adadhati > samidha adadhati, etc.

(b) A final -t becomes *-n* before *s-*, e.g.:

satam > tan satam; nirvapen srikamah > nirvapen srikamah, etc.

(c) A final *-m* becomes *-m* not only before sibilants and *r-*, but also before *y-* and

(d) In the mantras a final *-an* becomes *-am* before a vowel, e.g.:

sarvan agnin > sarvam agnin; mahan indrah > maham indrah, etc.

The latter two sandhis are quite natural and are not typical Maitrayaniya. The usage of *anunasika* for *m* before sibilants and resonants is regular in the Vedic. texts (cf. Wackernagel, 1896: 334), while the shortening of the final *am (<an)* to *am*, due to the tendency to shorten long vowels in hiatus, occurs also in the Kapisthala-Katha-Samhita (Raghu

Vira, 1932: 7) and in the Jaiminiya-Samhita (Caland. 1907: 32).

The main subject of this paper is the origin of the first two sandhis. For this study I could make use of many new mss., which were discovered after the editing of MS by v. Schroeder.

The most important of them is doubtless a ms. ofthe Bodleian Library at Oxford (Cat. No. Wilson 505), containing MS 1. This ms. was labelled as the teavastyayana because of its first page, but was identified by Lindner (1885:

as the oldest known ms. of MS, dated AD. 1566 (samvat 1622). It is written with utmost care, is very accurate and has some archaic paleographic features, as for instance, the *prsthamdtra* type of the vowel signs *(ke, ko, kai, kau)*, which is also used in v. Schroeder's ms. Hg (A.D. 1590) of MS II. A microfilm of the Oxford ms. (henceforth designated as O) was kindly placed at by disposal by the Bodleian Library.

Furthermore, 1 could use microfilms of a considerable part of the more than 70 mss. of MS gathered in the Vaidica Samsodhana Library at Poona under the catalogue numbers 663-735. These microfilm were made by Professor Witzel during the execution of the DFG-project Ho 136/3 started by Professor K. Hoffmar

The Poona collection of MS-mss. contains 11 more or less complete mss. of a whole kanda (No. 666 and No. 679 belong together). The rest comprises mss. of one or several prapathakas, as well as numerous fragments of padapatha, kramapatha jatapatha. dandapatha. ghanapatha and srautamantrasamhita (all mantras put together in the order of their use during various rituals).

All mss. come from the villages around Nasik (mostly from Bhadgaon), which since many centuries has been one of the centers of the Maitrayaniyas. I designate these mss. as PI, (Poona, Kanda I, number 1), etc. in the order established in the catalogue.

The oldest and the best of the Poona mss. is no doubt PI_2, though I cannot determine the exact date of it. The colophon is ciphered): *aste dupramite sake [.] ta samvatsare subhe pausamdse sitepakse saptami ravivdsare*, etc.

(0.3) For the study of the oral tradition I used the tapes made by Professor B.R. Sharma (Mysore) in Nasik. On these tapes MS I.1-3 and some other fragments are recited by two brahmans, Vedamurti Sripad Gangadhara Bhatta Mule from Bhadgaon and Vasanta Kulkarni from Nagpur, where the reciting tradition of the Maitrayaniyas was brought in 1916 from Nandurbar by Janardam Sastri Mule (Witzel, 1982: §4.3).

I

(1.1) The sandhi *-e, -as* > *-a* / *-V-* is found not only in MS, but also in the other terms of the Maitrayaniya school. In the Manava-Srauta-Sutra (MSS) and in the Manava-Grhya-Sutra (MGS) it is applied only to the mantras, both the ones borrowed from MS and the

new ones (Knauer, 1897 : XXXVI; v. Bradke, 1882 : 446). As far as I can see, the Varadha texts (Varadha-Srauta-Sutra and Varaha-Grhya-Sutra) restrict its usage to the MS mantras, as, e.g., in VSS 1.3.1.14 (= MS I.1.9:5,3) *samapa osadbhibhir.*

In the Maitrayaniya Upanisad the occurrences of this sandhi are very numerous but its usage is far from consistent. Most regularly it is applied to *-as/-e* before *iti* (v. Buitenen, 1962: 94f; Muller, 1884 : XLVIIIff).

Outside the Maitrayaniya tradition we find this sandhi only in the kapisthala-Katha-Samhita, a text closely related to MS. There, just as in MU and MGS, it was extended to the other accentual contexts (Raghu Vira, 1932: 6). The fluctuations in the usage of this sandhi are quite understandable, since all above-mentioned text have mostly no accents.

(1.2) The development *-as, -e > -a* should have had an intermediate stage *-as, -e > -a* followed by lengthening of this *-a*, when it was unaccented and the following vowel was accented. This appears from the fact that also final unaccented *-a* was lengthened in hiatus before an accented vowel. There are two possible positions where *-a* can stand in hiatus : before *r* (*-a r-* shows always hiatus in MS) and, sporadically, before *i-*.

(1.2.1) Lengthening before *i-*.

II.3.7: 35,7 *vairajasya rcam*
II.11.6: 143, 17 *yajusca rk*
II.12.4: 147, 6 *yena rsayah*
III.4.5: 50, 12 *cinvita rdhya*
III.7.2: 76,10 *samvatsarasya rddhya.*

In other accentual contexts the lengthening of the final *-a* does not take place. For example:

I.6.2: 88, 3 *sapta rsayah*
I.6.2: 88, 5 *sapta rtvijah*
I.10.5: 145.10 *asrjata rtubhyo.*

A short *a* could also appear before *r-* due to the shortening of a long *a* (Dharmadhikari, 1969: 627). For example:

I.6.11: 104, 2 *varunya rca*
I.7.4: 112, 18 *asisa rdhnoti*
IV.6.2: 80, 12 *vaisnavya rca.*

This *-a*, when unaccented, was probably lengthened again before an accented but I

could not find any instance of this junction in MS.

(1.2.2) Hiatus before *i-* occurs only in a few cases before *iti:*

I.4.12: 16, 14 *aham veda iti*

I.4.12: 60, 15 *vyaxaksva iti.*

(1.2.3) It is curious that v. Bradke, who first noticed this lengthening of a final before *r-* and *i-* (1884: 173), did not see the obvious connection with the accents and could not explain it.

(1.2.4) We can now place the development *-e, -as* > *-a* in a more general context and formulate the rule: "A final unaccented a is lenghtened before an accented vowel" or, since *-a* is the only theoretically possible short vowel in hiatus, "A final *anudatta* (as opposed to *pracaya*) is lengthened in hiatus".

(1.3) A very Important piece of evidence for the origin of this rule is provided by some old mss. of MS. Which use a special sign to mark all *anudattas* in hiatus. This sign in the form of a lying *devanagar* six, *w* or *w* (further designated as w), is placed below the *aksara*, under the *anudatta* stroke.

(1.3.1) The *w-* sign was first mentioned by Haug (1873: 31) who found it in his ms. of MS II, later used by v. Schroeder for the edition of Kanda II. v. Sihroeder, however, does not say a word about this sign in the introduction.

In 1885 Lindner discovered the *w-* sign in the Oxford ms. (Lindner, 1885: 103), where it is used very consistently. Of the Poona mss. only PI regularly uses this sign. The scribe of PII copied it faithfully in the first two prapathakas, but then he apparently found it worthless and omitted it further throughout.

(1.3.2) The w- sign appears in the following positions (examples are taken from):

-a < *e*	I.1.10: 5, 11 *adada indrasya*
-a < ai	I.3.1: 29, 10 *ksitya unnaye*
-a < au	I.2.8: 18, 10 *Ya jnapata avihrutam*
-a < as	I.11.4: 164, 15 *sarva ij janah*
-a < as	I.11.4: 164, 15 *sumana asat*
-e (+ a-)	I.11.4: 164, 6 *agre acha*
-o < as (+ a-)	I.2.3: 12, 14 vo *atra*
-o <a + u	I.10.16: 155, 9 *tho asuranam*
-am < an	I.2.6: 15, 5 *amrtam anu.*

Furthermore, the *w*-sign appears under the final *a* lengthened in the position before *r*-, *i*- (cf. § § 1.2.1-2). For instance, I.4.12: 60, 14 veda *iti*. PI$_2$ puts it also under the *i pragrhya*: I.3.17: 36, 12 *indragni agatam*.

(1.4) What did the *w*-sign designate? We can glean some evidence from the way it has been used. The *w*- sign is written with red ink, i.e., was put by the scribe who accented the ms. The second significant point is that PI$_2$ and PII$_1$ extended the usage of the sign to long *aundattas* (by nature or by position), which did not stand in haitus. For instance:

I.6.2: 86 *pass. vajinnagneh* (PI$_2$)[3]
II.1.4: 5, 7 *devataya w svam* (PII$_1$)
II.1.8: 9, 13 *viryetadya* (PII$_1$)

Since the *w*- sign is always accompanied by the sign for *anudatta*, I conclude that the *w*- sign designated a special kind of *anudatta* or its combination with another accent.

(1.4.1) We find the same sign in the mss. of the Vajasaneyi Samhita (Madhyandina), where it marks a so-called *kampa* an independent *svarita*, followed by an *udatta* (Haug: 1873: 33). The *kampa* was shown by Whitney (1862: 164ff) to be a combination of two accents: a *svarita* with an *anudatta*, which precedes every *udatta*.

I suppose that in MS the *w*- sign designated also a combination of two accents, but in this case of *anudatta* with *udatta*. This combination arose, when in hiatus the *udatta* influenced the preceding *anudatta*, so that the *anudatta* syllable received an additional accent. The realization of two accents on one syllable protracted the vowel concerned. The only possible short vowel in hiatus, *a*, was consequently lengthened.

(1.4.2) The same lengthening we find at the *kampa*, which is mostly noted in the vedic texts with 3, a usual sign of protraction, before or after the *svarita* syllable. Many mss., however, also mark the vowel of the syllable as long, lengthening it if short. The Samaveda mss. do so consistently, the Atharvaveda mss. very often (Whitney, 1862: 169). Even in the Rgveda a case of protrection is found: 1, 165, 6c. 10c *hy ugrah* (ed. Muller). In MS, where the 3 stands before the *kampa* syllable in combination with an *anudatta* stroke below the *aksara*, the mss. do not mark the protraction of the vowels, but instead they frequently write the first consonant of the syllable double. It mostly concerns *t* or *n*:

I.4.3: 51,11 *kr3tto 'yah* (ed. v. Schroeder)
I.6.12: 106, 2 *ya3tto 'nudait* (ed. v. Schroeder)
I.8.6: 123, 18 *ija3nno 'gnim* (PI$_2$).

(1.5) The question may arise: why did the combination of accents take place in MS at the hiatus of *anudatta* + *udatta* and not in other cases (*udatta* + *svarita* or *udatta* + *anudatta*)? I believe that the answer lies in the nature of the Old Indian accents. *Anudatta* was a low tone, *udatta* was a high or, more exactly, a rising tone, while *svarita* was a combination of both (pan. 1, 2, 31), i.e., a falling tone. MS has preserved this system better than many other schools (cf. Witzel, 1974: 498f), which can be seen from the Maitrayani system of marking the accents. A normal case of *anudatta-udatta-svarita* is written in MS, and when the *svarita* is short and is immediately followed by an *anudatta*, the sequence is noted down.

It appears then that the difference in pitch was most pronounced in the case of *anudatta* and *udatta*.

(1.5.1) However, the difference in pitch between *anudatta* and *udatta* cannot be the only reason, since otherwise an *udatta* + *anudatta* hiatus would have shown the same protraction. I suppose that it was the rising character of *udatta*, which was the decisive factor. If the reciters had started to rise the pitch too early inthe hiatus *anudatta* + *udatta*, the *anudatta* could have been interpreted as *udatta*. Other hiatuses could in no way be misunderstood.

(1.6) finally, some words about the modern Maitrayaniya recitation may be added. As far as the tones are concerned, it is in general very similar to the recitation discussed and recorded by Haug, 1873: 48ff. Of the *anudattas* in hiatus two instances occur on the recorded fragments: I.1.1: 1,2 *karmana apyayadhavam* and I.1.1: 1, 3 *devebhya indraya.* Both brahmans recite the final *a*' s very long, not so long as in the case of *kampa,* but still at least twice as long as the normal long vowels. These *a*'s get also special emphasis. The reciters almost cry them out, so that unfortunately one cannot determine the pitch.

II

(2.1) In contradistinction to the first sandhi, the rule *-t s-* > *-ns-* occurs in other texts of the Maitrayaniyas only sporadically. MGS and MSS write -ns- for -t s- just in one mantra borrowed from MS (IV, 13, 10: 292, 14 *tan sam yor avrnimahe*). Elsewhere the junction remains uncharged, except for some cases of *-ch-* (v. Bradke. 1882: 466f; knauer, 1897: XXXVII).

In Cowell's edition of MU *-ns-* is found twice: VI.8: 101, 1 *svan sarirat* and VI. 27: 148, 2 *yan sarirasya.* These spellings however, are not mentioned by Ramatirtha, the seventeenth century commentator of MU, and since he is very careful in noticing strange sandhis, we can be quite sure that his text did not have them and, consequently, that these spellings are writing mistakes (v. Buitenen, 1962, 95). The spelling *-ts-* occurs in MU thrice: I.2: 6, 3 *tatthavit susrumah,* III.2: 42, 3 *tat sariram* and VI.34: 179, 6 *samparkat suddham.* In the order places the ordinary sandhi form, *-ch-*, is found (Tsuji, 1955: 94);

Also in the Varaha texts *-ch-* is the normal representative of the junction *-t s-* I have found only one case of *-ns-* : VSS 1.7.1 *tan sakeyam,* which appears directly after a large

lacuna in a mantra, probably taken from MS (Caland and Raghu Vira do not mention this mantra in the index).

(2.2) The practically complete absence of this sandhi in the related texts and the phonetic improbability of such a development made many scholars believe that this sandhi must be of a graphic origin. Nobody, however, has ever given a detailed account of his point of view on this matter.

(2.2.1) Garbe (1882: 117) and Thieme (1935: 19, note 2) confined themselves to a short statement about the probable paleographic origin of this sandhi. v. Buiternen (1962: 95) tried to explain the *ns-* formations as 'erroneous contaminations due to a scribe who mixed up the sandhis *-t s-* > *-c ch-* and *-n s-* > *-n s-* / *-n ch-* I do not see how these contaminations could arise, because if *-t s-* had become *-c ch-*, it is incomrehensible that a scribe made *-ns-* of it.

(2.2.2) Weber (1873: 122, note 1) assumed that 'n hier einfach, und zwar etwa schon vor Zeiten, in einem Mspt., auf welches unsere Mss. sammtlich zuruckzufuhren sein wurden, verlesen ist fur c. Die Schreibung cc ist ja nach Pan. 8, 4, 63 gleichberechtigt mit cch, war aber handschriftlich bisher noch nich nachgewiesen'-

This point to view provoked criticism by v. Schroeder (1879: 185f), whose objections can be rendered as follows:

(1) It is not a single mistake, but a consistent spelling in all mss., while *-c-* and *-n-* have a very different form even in the oldest mss.

(2) The text of MS was recited during sacrifices and learnt by heart, so that a paleographic explanation would mean a break in the oral tradition.

(2.2.3) v. Schroeder's objection to *-cs-* as the origin of the corruption seems justified, since *c* and *n* have always been clearly distinguished in *nagari*, both isolated and in ligatures (Buhler, 1896: Tables IV-VI).

His second argument, however, is unacceptable to me. The manuscript tradition is to a great extent independent of the oral tradition. When a scribe copied an old ms., he tried to preserve its readings, even if they deviated from the text he had learnt and recited. Otherwise, the writing mistakes would have been corrected at the next copying, which was mostly not done. Once a mistake crept into the text, it was faithfully copied again and again.

For example, in MS we find in all mss. I.4.5: 53, 10 *janasruteha*, which is a writing mistake for *janasruteyah;* in II.7.17 some verses are treated as a prose text (p. 101 note 7 and p. 102 note 7), which is certainly due to the omission of *danda's* in the original ms., etc. etc. I shall discuss one more example of the independent manuscript tradition in § 2.6.

(2.2.4) *v.* Schroeder's own proposal concerning the origin of the sandhi *-t s-* > *-ns-*, viz. a Middle-Indian sound development, is highly improbable. As a matter of fact, the so-called spontaneous nasalization, which v. Schroeder refers to, occurs in MI only before clusters containing stops. We have to assume in that case that -t s- first became -cch-, then

-cch- developed into -nch- and, finally, s- was restored.

(2.3) Thus I believe that we have to look for a paleographic explanation. The spelling *-ns-* must have arisen due to the wrong interpretation by the scribes of some complicated ligature with *s-* as the second member.

(2.3.1) To determine, what was the first member of that ligature, I have checked all occurences of the junction *-t s-* in 2 mss.: O and PI_2. For, if we find spellings other than *-ns-*, we can try to reconstruct the original form of the ligature.

The junction -t s- occurs in Kanda I 36 times, and we find in O and2 PI_2 together 5x *-ais-* (for *-at s-)*, 1x *-ais-*, 1x *-ens-* (also for *-at s-)*, 1x *-s-*, 1x *-ts-* and 1x *-ch-*. Twice some strange scrawls are found before *n*, as if the scribe tried first to reproduce some other letter. In other places the mss. write *-ns-*, using not a ligature, as in the edition of v. Schroeder, but *n* with a *virama*.

(2.3.2) A rather frequent appearance of diphthongs with *i* instead *of -t* is very striking, v. Schroeder's mss. have such spellings too: I.1.5: p. 3 note 3 M2, H, Bb, B *tain sundhadhvam* for *tat sundhadhvam;* I.6.2: p. 87 note 15 M2 *srnavai sa°, B srnuvai sa°*, H, Bb *srsrnuvai* for *srnavat sasyamanam*, etc. These spellings point to a ligature, the first element of which should have looked like *i* (a sequence *-ai-* was later in most occasions changed to *-ai-* or *-e-).*

(2.3.3) Thus the original ligature could be misread both as *-ns-* and *-is-*. However, in the modern *devanagari n* and *i* are so different that they can hardly be mixed up. But if we go a little back in history, we see that in the northern mss. of the XII-XIII cc. *i* was mostly written as ε (Buhler, 1896: Table VI, 3, XV-XVII), while *n* in ligatures was written as *(nc)* (Table VI, 24, XII, XV). The form of *s* was practically the same as in the modern *devanagari.*

We can now reconstruct the original ligature as or similar. What cluster did this ligature represent? In my opinion, it can be nothing else than *-ts-*, which should have looked in XII-XIII cc. mss. like and was therefore almost indistinguishable from *ns*. It is very important that the junction *-n s-* did not become *-nch-* in MS, but remained *-ns-*, so that both ligatures existed side by side. Another fact, which contributed to the corruption, was the obsoleteness of the form of *n* in the XIV-XV cc., when the original of all extant mss. of MS was written.

(2.3.4) A decisive proof that the original ligature represented *-ts-*, is given by the spellings *-ts-* in PI_2 (I.4.10: 59.6 *agrahit sraddham*, found also in PI_1, PI_3 and PI_4; O reads here *-ch-*) and in v. Schroeder's mss. (III.11.6: p. 149 note 4 *dadhat sraddlam*), which appear exactly when *s* was followed by a consonant. This indicates that in the original mss. the scribe put *t* apart with a *virama* sign, when he found a ligature of three consonants awkward. In these cases there was no confusion by the later copyists, and the spelling with *t* was preserved.

(2.4) Thus, we have to conclude that the junction *-t s-* remained unchanged in MS. This conclusion is by no means surprising. Firstly, we have already seen that in MSS and MGS this junction is not affected by sandhi, while the spellings with *-ts-* occur also in MU.

And secondly, the readings of the mss. point unambiguously to a weak, implosive pronunciation of final stops (or stops in the position before obstruents) in MS. This especially concerns the final *t* (examples cited are taken from O, when not otherwise stated):

(a) Before clusters with initial *j, t, d, dh,* i.e:, consonants to which *t* is assimilated in external sandhi, the final *t* is regularly dropped (cf. Waçkernagel, 1896: 327):

I.10.13: 152, 12 *etajyesthani* for *-jjy-;*

I.4.3: 51, 10 *itvam* for *-ttv-;*

I.10.5: 145, 14 *tasmadvadasakapalo* for *-ddv-*, etc.

v. Schroeder mentions such dropping in his mss. too. For instance, III.10.5: p. 136 note 6 *prchedvadasa* for *-ddv-*. In III.6.10: 74, 8 v. Schroeder edited *tasmad vivratena* instead of *tasmad dvivratena* (pointed out by Caland, 1918: 8).

(b) Also before other clusters the final *t* is sporadically lost:

I.I 0.16: 155, 10.11 *ya stryasnati* (2x) for *-tstr-;*

1.4.9: 57.4 *ya skandati* for *-tsk-*, etc.

In III.3.10: 44, 10 v. Schroeder's mss. read *hanya pra* (note 3). He emended it to *hanyam pra*, but, as Caland, 1918: 8 remarked, the correct reading must be *hanyat pra*.

The final *t* is also inclined to disappear before an initial clyster, e.g., I.10.18: 158, 17 *ayatrir* for *-ttr-* (note 4).

(c) Before initial voiced stops, final *k, t, t, p* are often not affected by sandhi:

I.10.9: 149, *3.4 yat barhir;*

I.11.5: 167.1 *vak hi* (PI_2), O: *vag hi;*

I.11.7: 169, 13 *kakup viryam*, etc.

v. Schroeder's mss. also have such readings, *e.g.*, IV.2.3: p. 24, note 3 *tajak ha* or *tajag ha.*

The spellings with non-assimilated voiceless stops, both internal and external, are also mentioned by Lokesh Chandra, 1950: XV If for his mss. of the Jaiminiya-Brahmana. He even remarks that such spellings 'outnumber the usual ones'.

(d) Before initial voiced consonants, even single ones, the final *t* is sometimes dropped:

I.4.7: 55, 13 *divya dhamno* for *-ddh-*

I.11.9: 171. 12 *brhayad* (PI_2) for *-dy-*.

An example from v. Schroeder's mss.: I.6 3.: p. 91 note 8 H, Bb *adamhayan*, B *adrmhayan* for *adrmhadyan*.

On the tapes of the modern recitation one can hear how short the final *t* is pronounced. In *agaddhisana* (p. 1,6) it is hardly audible.

(e) Mss. disagree about the treatment of the final *t* before *ch*. Most of them drop it (v. Schroeder, Introduction Kanda I, p. XLIII), but there are some which write *-tch-*. An example from v. Schroeder's mss.: I.11.9: p. 171 note 1 *tat chidram;* II.8.7: p. 111, note 8 *achat chamdo*.

(f) Some mss. make distinction between the junction *-t y-* inside a sentence and the same junction at a sentence boundary. The first yields a normal *-dy-*, but the second remains unchanged, and *-t* is written with a *virama*. PI_2 uses a special ligature for this junction at the sentence boundary: *-dy-* with a dot inside[2]

(g) Also the final *n* is much less engaged in sandhi, than the grammarians prescribe. The junction *-n j-* remains unchanged; -n *s-* becomes *-ns-* and not *-rich-*. In the Varaha texts *-n s-* is not affected by sandhi at all.

(h) I believe that it is due to this implosive pronunciation of voiceless stops before non-sonants that MS could preserve the root *ksa* 'to tell, praise', derived from *kas*. In most other texts *ksa* became *ksa* or *khya*.

(2.5) To this evidence for the implosive pronunciation of final stops in MS we may now add the asandhi of *-t s-*, which outside the Maitrayaniya tradition is found also in some inscriptions (Wackernagel, 1896: 329 with Debrunner's Nachtrage).

Unfortunately, no example of this junction occurs in the fragments of MS which are recorded on the tapes I could use.

(2.6) In conclusion, I would like to adduce one more example of wrong interpretion of ligatures from the mss. of MS, because it demonstrates very well how easily writing mistakes arise and how persistent they are (cf. §2.2.3). Besides, we can see from this example that the graphic development described above with respect to the change of *ts* into *ns* is not unparalleled.

(2.6.1) As a matter of fact, all mss. of MS write *sth, tth, kth* as *sch, tch, kch* respectively. v. Schroeder did not mention this peculiarity in the introduction, but his mss. definitely had such readings, because, for example, in III.9.2: p. 114 note 14 he says that all mss. write *-ch-* instead of *-tth-*, while in IV.6.8: 91.1 he has even edited *-ch-*: *vecheti* (later corrected in 'Correcturen und Conjecturen' p. 312 to~*vettheti*).

Besides, the ligatures *tch* and *kch* were often mixed up, since the hook on the right side of *kch* was frequently dropped. For instance, in I.3.3: 31, 4.v. Schroeder hesitated about the correct reading.

(2.6.2) What was the origin of these spellings? If we would accept v. Schroeder's ar-

gumentation discussed in §2.2.4., we should admit that it cannot be a writing mistake, because it is a consistent spelling and because of the break of the oral tradition. But these spellings have certainly nothing to do with the real pronunciation and are of paleographic origin.

From the earliest *nagari* inscriptions till the mss. in Gujarat and Maharastra of the XIV-XV cc. *th* was written isolated as, and in ligatures as *stha*, etc. (Buhler, 1896, Tables IV-VI). In the Oxford ms. of MS *stha*, etc., still appears as. But since *ch* had the form, the copyists analysed as *s-ch* and wrote consequently.

G

GOVINDASWAMI

Dr. George Buhler in his introduction to the Sacred Books of the East series Vol. XIV p. XLV remarks that according to Dr. Burnell, Govindaswāmi, the commentator of the Baudhāyana Dharma Sūtra, is said to be a modern writer and composed his Vivaraṇa on the Baudhāyana Dharma Sūtra (BDS) without the aid of other Vṛttis.

MM Dr. P.V Kane in his "History of Dharma Sāstra, Vol. I, part I, p. 53, states that Govinda appears to be a very late writer. As regards the date of Govindaswāmi, the commentator of the BDS. Dr. Kane has not clarified his position in all the volumes of the History of Dharma Sāstra.

Hence, it is necessary to discuss this problem once for all only to arrive at some definite pointed conclusion.

It has to be emphasised in the present context that Govinda-swāmi in his Vivaraṇa on the BDS does not give us any clue to settle his date, simply because he does not care to refer to any accepted authorities on Dharma Sāstra like the commentrators of the Manu Smṛti, Yājñavalkya Smṛti or the commentators on the Dharma Sūtras like Haradatta and Maskari or even the digest authors like Caṇdes'vara, Raghunandana, Kamalākara-bhaṭṭa, Nilakaṇtha and others.

Here for settling the date of Govindaswāmi, we have only to depend upon the external evidence.

It must be pointed out here that the earlier accepted authorities like Kamalākarabhaṭṭa, Nilakaṇṭha and Raghunandana, have not quoted Govindaswāmi's Vivaraṇa on the BDS. This helps us to infer legitimately that Govindaswāmi seems to have flourished after these writers. Dr. Kane has placed the literary activity of Nilakaṇṭha, the digest author of 12 Mayūkhas, between 1615 to 1645 A.D. particularly in his introduction to the Vyavahāra Mayūkha. Kamalākarabhaṭṭa is said to have completed his NirṇayaS indhu at 1612 A.D. as

shown by Dr. Kane. This helps us to fix the lower limit for the date of Govindaswāmi. If this line of argument is accepted, then Govindaswāmi appears to have flourished after the middle of the 17th century A.D.

It is worthy of notice here that Vaidyanātha Diksita in his Smṛtimuktāphalam—Varṇāsramadharma-Kāṇḍa p. 142 has quoted the extract from the Vivaraṇa of Govindaswāmi on the BDS. On a closer comparison of this extract[3] with the printed edition of the Baudhayana[4] Dharma-Su¯tra with the Vivarana of Govindaswāmi, it is found that the extract is found verbatim on pages 139-140 of the printed edition of the BDS brought out by the Kashi Sanskrit Series No. 104 in 1972.

It would be interesting to know the probable date of Vaidyanātha Dikṣita, the author of the Smṛtimuktāphalam. Dr. P.K. Gode has fixed the date of Vaidyanātha Dikṣita after 1686 A.D. in his discussion on the problem of the date of Vaidyanatha Dijsita in the Journal 'Mimāmsā Prakasa' Vol. III, pp. 39-42. It may be noted here that this place of information becomes available to the readers even from the Bibliography of the published writing of Dr. P.K. Gode particularly published in his commemoration volume.

It should also be noted here that Vaidyanātha Dikṣita belongs to the southern part of India and is not quoted by Bālambhaṭṭa Pāyagunde who is placed between 1730 and 1820 A.D. by MM. Dr. Kane and who belongs to the northern part of India.

In the light of this external evidence, it would be fair on our part to place Govindaswāmi, the commentator of BDS between 1650 and 1690. If this is accepted, then he ceases to be a modern writer as held by Dr. Burnell, and is also not a very late writer as held by Dr. Kane. In conclusion, he will have to be treated as a medievel writer on Dharma-Sāstra.

J

JALA-DIVYA (THE WATER ORDEAL)

While discussing the fire ordeal, we have observed that the fire and water, the deified objects of nature, were the primary ordeals, nearer to the primitive man. With the discussion of the water ordeal, we can say that instead of making fall a person prey to the naked elements of nature (which can be ferocious in their wild forms), the Hindu Jurists have made these trials useful by standardizing them in their refined and easy forms. In the case of the fire ordeal, we have seen that these writers have summarily rejected the ancient form of entering into uncontrolled fire practised by the people and have established the method of 'Holding the red-hot iron ball covered with seven leaves.'

In the water ordeal described by the Dh. writers, the accused person is required to plunge (nimajjanam) into a navel-deep water for a specific time. 'It is very difficult', observes N.C. Senagupta, 'to say what form the water test took in its primary stages, but the form in which it survives in Smṛtis consists in the ability of the accused person to be under water for a length of time which is not unreasonably long".

Sl. perhaps give us a clue in this respect. They are found, probably, suggesting the older form of the trial, though they actually describe the method accepted in the Dh. Sāstra. We have seen that SL. in general do not describe the detailed procedure of the ordeals. They have simply enlisted these ordeals, but the very names of these ordeals make clear the form of the trial, in addition to the fact that sometimes they also help us in getting an evolutionary perspective of the form of the trial, as we find in case of Lohadhāraṇam which straight way rejects the ancient form of entering into fire.

Now, these writers describe this ordeal as the ordeal of entering into waters (Apsu praveśaḥ) which of course reconciles with the Dh. method of plunging into the water (SL have described in short the procedure of the water ordeal which shows that they do not deviate from the Dh. tradition) but also suggests its ancient form i.e. entering into (unfathomable) waters.

The conclusions thus received agree with the view expressed by Hopkins regarding the older form of the water ordeal.

Hopkins observes, 'In the water test, one plunges under water and to prove innocence, must remain under as long as it takes for a dart shot at the moment of diving to be brought back. In the fire test one carries a red-hot iron-ball and if unburnt, is innocent. These two are alterations of old material in wich the accused walks through fire as in epic tests or is thrown into water to see if he drown.

Manu happens to be the first writer to discuss these two primary ordeals. Dr. Keith believes that Manu's description of the fire and water ordeals speaks of the older method and not the normal ordeals described by the later commentators. Referring to the water ordeal Dr. Keith observes. 'the second form was presumbly nothing more or less than ordinary Teutonic ordeal in which the person was thrown into the water and held innocent if he sank. The commentators sa in accord with the later usage.

A closer study of the ordeals described by Manu would, however, point out that they do not depart from the accepted Dh. forms of these tests. (i) The causal forms Āhārayet and Nimajjayet clearly show that these ordeals were conducted (by the Prāḍvivāka) according to the accepted rules. (ii) It will be observed that the Dh. form of the water ordeal really happens to be Apsu nimajjanam (plunging into water). Manu's word Nimajjayet thus strictly confirms the Dh. method of the trial. To link Manu's ordeal with the Teutonic form of its kind, therefore, appears to be rather far-fetched.

Considered from the caste-point of view, the water ordeal was recommended particularly for the Vaiśyas, though it could be well used for Kṣatriyas also.

The water ordeal was recommended for strong and stout persons only. It was therefore, prohibited for women, children, the old, the weak, the unenergetic or the persons suffering from diseases and the persons full of miseries, since these pesons, if plunged, die instantly because of the lack of vitality. The NMS Bhāṣya points out that the water ordeal should not be forced upon these persons, but if they offer to undergo it on their own accord there is no objection in trying these persons with the test. The water ordeal is particularly prohibited for the fishermen and the persons suffering from asthma or having cough. From the cost-point-of-view, the water ordeal is a higher sort of ordeal, enlisted third in the order.

PROCEDURE

VIṢṆU

Now, the water ordeal. The water should be void of mud, moss, skark, fish, leech and other animals. The accused person should enter into the consecrated water, holding the thighs of another person, who is free from love and hatred and is standing in the navel deep water. Another person should simultaneously discharge an arrow by the bow which is stretched neither too strong nor too mild. Another person should bring that arrow. If the person is not seen above waters, during this process, he is pure. If even a single part of his

body is seen he is considered as guilty. (The mantra to be recited should be) "Oh water, you know the facts that are not known to human beings, since you happen to be in the hearts of all beings like a witness. The person accused in this litigation plunges in you. Be therefore worthy of protecting him from the doubt according to Dharma".

SANKHA AND LIKHITA

A person facing east should stand in the nevel-deep water, holding a post made of the sacrificial tree. (The mantra to be recited should be-) "Oh! Varuṇa you are the Existing and the Non-existing! You are established in both of them. Oh God! the Truth as such resides in you and therefore, Oh Desirable one! speak and direct the truth.

YAJNAVALKYA

Having consecrated water with the words "Oh Varuṇa! protect me by Truth!" the accused person should enter the water, holding the thighs of the person standing in the navel-deep water. If the speedy person, while bringing the arrow that was shot at the same time of the plunging of the accused person, sees that accused person beneath the waters, he is pure.

NARADA

I would now tell the procedure of the water ordeal which should be tried in the seasons other than Siśira and Hemant. The trial should not be conducted in the river flowing very fast or in the sea or in all sorts of flowing waters in general. It should be conducted in natural reservoir of water (Devakhāteṣu) such as ponds and lakes. Three arrows should be discharged with not-a-too-stretched bow. The person should plunge in the water in such a way that there may not be any doubt (regarding the results). The rule regarding the bow is: The fast or formidable one is of 700 Aṅgulas. The middling one of 600 Aṅgulas and the slow one of 500 Aṅgulas. A strong man should stand like a post in the navel-deep water. And the accused person should enter the waters, holding his thighs. A young speedy person should run with his maximum speed from the place of discharging the arrow, while another person should similarly come running to the place from where the former had started, holding the arow shot by the middling bow. Bringing the arrow in this way, if he does not see the person in the water, (i.e. if the person remains plunged beneath the waters) the person is pure. If he shows any of his limbs or is found at a place other than where he actually plunged, he is not pure. The water should be addressed with the following mantras: "Oh Water and Fire! you are most specific in distinguishing the truth and the untruth, and the water is more so since the fire has come out of it. The knowers of Dharma conduct the investigation of the guilty or the accused persons. Oh God Water! be, therefore, worthy of protecting him with truth."

BṚHASPATI

After having made the accused person enter waters, one should shoot three arrows. If the person remains merged when the middling arrow is being brought, he is pure.

KĀTYĀYANA

In order to test the purity (of the person) the arrows should be made of bamboos and should not have iron-points. The archer should discharge the arrows with might. After the arrows are shot, the plunging (of the accused person) and the running of the runners should take place simultaneously. There should be different persons for each of the activitiy i.e. for going (to the place where the arrow falls), for bringing the arrow and also for entering into the water (with whose support, the accused person plunges into the water). When plunged, if the person sees any of the creatures in the water and thus comes out, he should be asked to plunge again after marking the actual place where he had plunged. After plunging, if the person shows only his head but not the nose or ears, he is declared innocent.

PITĀMAHA

Now, I will tell an all-time (Sanātanam) practicable (Dharmyam) procedure of the water ordeal which has been recommended by Brahmā himself for testing the auspicious and the inauspicious. The Wise (king) should get a circle drawn and worshipped with devotion by offering incense (Dhūpa) and lamp (Dipa). He should also workship the arrows and the bow made of bamboo. He should then carry on the rest of the rituals.

The discharger should be a Kṣatriya or a Brāhmaṇa following that occupation. Pure and serene, without any cruelty at heart, he should observe fast. He should discharge three arrows with the middling bow, aiming the target at the distance of 150 Hastas. As soon as the arrows are thus discharged according to the recommendations of the śāstra, a strong person should be asked to take the middle arrow. The actual place where the arrow falls should be considered and not where it subsequently goes on creeping, because an arrow may thus creep to any distance. The wise person should not discharge the arrow if the wind blows fast or if the ground is unclean i.e. full of trees, posts or full of grass, trunks of trees, creepers, mud or rocks. The person should plunge into the steady water which should not be too little and should be void of grass, moss and animals like leech and fish. The plunging of the person must be conducted in natural lakes and all artificial reservoirs or the fast flowing rivers should invariably be avoided. The persons should be plunged in the lakes of steady waters, but never in the rivers or lakes with waters flowing very fast. The person must be asked to enter into the waters which are always without whirls or mud.

The king should first ask a person to stand in the water like a pillar, banking upon whom, the person to be tested could plunge into the water. The person, thus come for the purpose of undergoing the trial, should stand in water, facing east. Various gods and the

Waters should be invoked as follows: "Oh! Water! You are indeed the first creation of the creator. Created as the very life of all beings, you are said to be the cause of the purity of men and wealth, and therefore, please show yourself in this test of the auspicious and the inauspicious". Both, the person undergoing the trial and the person going for bringing the arrow should do their jobs simultaneously. A speedy person should go to the target from the place of the arch (Toraṇa). The speedy youth should go with his maximum speed from the place of discharging the arrow to the place where the middle arrow falls. Similarly another person should take the middle arrow and go to the place from where the former had started. On arrival, it the person holding the arrow, does not see the person on account of being plunged in the water, that person is declared innocent. The person is guilty if he shows any of his limbs or is found at the place other than where he actually had plunged.

The procedure of the Water Ordeal thus described by the Smṛtikāras can be discussed in the following heads: (1) Reservoir used. (2) Selection of the site on the bank. (3) Persons required—(a) for the support of the person undergoing the trial. (b) for discharging and bringing of the arrow. (4) The trial—(a) discharging and bringing of the arrow. (b) preliminary rites. (c) taking up the positions. (d) mantras recited (e) retrial (5) Signs of the success or the failure of the trial.

(1) Reservoir used:

It has been unanimously and emphatically pointed out by every writer that the ordeal must be conducted in navel-deep water only.

Earlier writer like Viṣṇu has put only two conditions for the water to be used in the trial viz. it must be free from moss and mud and from animals like shark, leech, fish etc. Later writers have following additions: The waters must not be flowing very fast (Nār.). Pit. has improved it by putting it positively i.e. it must be steady. As a result, we find that fast flowing rivers and oceans are prohibited and reservoirs like ponds and lakes are recommended, but in this case also we find that only natural reservoirs (Devakhāta i.e. dug by god) are accepted and not the artificial ones (Ahārya). VP explains the word Ahārya as the water stored in a big pan or in a tank collecting it from some river or other sources.

We have seem that the water ordeal is to be conducted only in a navel-deep water. It is therefore possible to collect that much water in a tank or a big pan and conduct the trial, but that is not allowed. In the case of the water ordeal, therefore, we find that the concerned parties had to go to the place where the recommended reservoirs were available, unlike all other ordeals which could be conducted locally.

(2) Selection of the site on the bank:

Earlier writers have not given any details regarding the site for conducting the trial. According to the later writers, an arch (torana) of the height of the ears of the accused person must be erected on the plain surface of the ground. The plot selected must be duly prepared (i.e. besmeared with cow-dung) for the purpose, point out VP. Pit. declares that

the arrows must not be shot on an uneven ground or the ground full of trees, trunks, creepers or stones. Naturally the site selected must not have such hindrances. The VM points out that the arch must be erected on the western bank. This has been concluded by the digest on the basis of the provision that all the rites should be performed by the accused person, facing east.

(3) Persons Required

It will appear that these trial-makers have assured maximum security to the person undergoing the trial. Such precaution is taken in case of the water ordeal also.

(a) Person required for supporting the accused person

The water ordeal is a thorougly harmless ordeal. In this ordeal, the person is required to plunge into the navel-deep, non-flowing water, and that too, for the time which is not unreasonably long. This by itself is not risky at all, but the Dh. writers have provided a helping support for the plunging person by asking a strong and stout person to stand in water holding a sacred post (Dharmasthūṇā) in hand. The accused person is supposed to plunge in the water by hoding the thighs of the person. The person, free from love and hatred, is asked to stand in water facing east. The sacred post is made of the sacrificial wood (such as Khādira). Holding of the post by the person werves a double purpose. Besides supplying an additional support, the post, the symbol of Dharma, helps hightening the religious sentiments of the accused person who banks upon it in this divine method of investigation.

(b) Persons required for bringing the arrow

In all, three persons are required for discharging and bringing of the arrow-one for discharging and the other two for bringing.

Earlier writers have not given any details regarding the former one, but the two persons appointed for bringing the arrow must be good runners, they point out. Pit. however says that the person discharging the arrow (Kṣeptā) must be a Kṣatriya, or a Brahmin following his occupation. He should be pure, calm and uncruel at heart. He must have observed fast before undertaking the job. He should discharge the arrow with the middling bow. Two persons-one for each way i.e. from the place of discharge to the target and vice-versa and utilised for bringing the arrow. These two persons must be fast runners. A person who tops the speed amongst fifty contestant-runners is known as a fast runner, and two such persons must be selected for the purpose.

(4) The Trial:

(a) Discharging and bringing of the arrow:

Discharging of the arrow plays an important part in the trial. That is why we find that

special worships are offered to the bow and the arrow. Following are the rules regarding the selection and the method of discharging the arrow (i) The arrows must be made of bamboo. They should not have iron-points. (ii) the earlier writers are silent regarding the method of discharging the arrows. Kāt. only points out that the arrows must be discharged firmly (sudṛḍham kṣipet). We know from Nār. that the arrows in general can be discharged either by a formidable bow (krūram dhanuḥ) of 700 Aṅgulas, or a middling bow (madhyaṁ dhanuḥ) of 600 Aṅgulas or mild bow (maṁhyaṁ dhanuḥ) of 500 Aṅgulas. According to the Mit. the Krūra Dhanu is of 4 Hastas and 11 Aṅgulas, the Madhya of 4 Hastas and 10 Aṅgulas and the Manda of 4 Hastas and nine Aṅgulas (where one Hasta is equal to 24 Aṅgulas). In the Water ordeal, all the arrows are shot by the midding bow. (iii) The discharger (Kṣeptā) should aim the target at the distance of 150 Hastas (i.e. 300 ft. approx) and discharge three arrows by the middling bow. The exact place where the second, arrow falls is to be counted i.e. the place, where the arrow touches the ground first, is be considered. Subsequent creeping of the arrow is not to be taken into account.

It is clear that the accused person is expected to remain plunged in the water till the runners run up the distance between the arch and the target (i.e. where the second arrow falls).

It will appear that by asking the discharger to discharge the arrows to a fixed target of 150 Hastas distance, the Dh. writers have tried to be exact as regards to the distance to be covered by the runners, and since there could hardly be any fluctuation in the aiming of an expert discharger, the distance thus expected remains much exact. The place where the second arrow falls however remains undecided and, therefore, a scope for chance cannot be ruled out.

Nār. therefore points out that discharging the arrow nearer or further the target should be considered as a fault.

Some writers on the other hand plead that the discharging of the arrow should be considered as formal. According to them, discharging of the arrow is meant for Adṛṣta. The runners should run a fixed distance of 150 Hastas disrespecting the distance indicated by the arrow. The VN points out that the runner should take the arrow falling nearer than the target to the fixed target, but if it falls beyond the target, he should stand at the place where the arrow falls and run the distance i.e. he should run the distance between the fixed target and the Torana or the place where the arrow falls and the Toraṇa, whichever is more.

Majority of the writers, however, hold the view that the plunging of the person in the water for the time required for running the distance indicated by the arrow forms the nucleus of the trial. Discharging of the arrows indicating the distance has thus an important role in the trial. One, therefore, cannot neglect the results of (i.e. the distance covered by) the discharging of the arrows.

It is interesting to note that pratāparudradeva has recorded both the views regarding the distance to be run by the runners given above, probably indicating that the local authorities were free to resort to any of the options.

(b) *Preliminary rites:*

After selecting the site on the bank of the reservoir, an auspicious circle should be drawn on the besmeared ground. An arch must be prepared and the target at the recommended distance must be fixed. The bow and the arrows must be worshipped by offering incense, lamp, flowers, etc. This should be followed by Varuṇa-pūjā. After this all the general rites such as invoking Dharma and performing various sacrifices should be conducted and the Śiraḥpatra should be tied on the forehead of the person.

(c) *Taking up the position:*

After the Prāḍvivāka addresses the water, the accused person should enter the water and stand near the strong person who is standing in the navel-deep water holding the sacred post in the hand.

The discharger should then discharge three arrows. One of the two runners should then take his position to the place where the second arrow falls, while the other person should stand near the arch. As soon as the accused person and the two runners thus take their positions, the Prāḍvivāka gives three claps and at the third clap, the accused plunges in the water holding the thighs of the strong person, and at the same time the person standing near the Toraṇa starts running. As he reaches the target, the person already standing near the target holding the arrow should run to the Toraṇa and should see the accused person plunged in the water.

It is to be noted that the plunging takes place only after all the persons take their positions. Thus, the accused person is required to be under waters for the minimum possible time i.e. the time required for actual running.

(d) Mantras recited:

Viṣṇu, Sl, Yāj. Nār. and Pit. have given various mantras that are to be used in the water ordeal. VP explains their use as follows. (i) after performing the Varuṇa-pūjā, the Prāḍvivāka should consecrate waters. For consecrating water (Jalābhimantraṇam), he should either use the mantra 'Tvāmambha.' etc. given by Viṣṇu or 'Toya tvam' etc. given by Pit. Any of these mantras could be used optionally since both of them have a similar meaning. The Prāḍvivāka could use the mantra 'Trāhi enam' given by the KP while making the Śodhya enter water (ii) The Varuṇābhimantraṇa-Mantras to be recited by the Prāḍvivāka should be either 'Sadasacca' etc. given by SL or 'Satyānṛtavi-bhāgasya' etc. given by Nār. It should be however pointed out that according to Asahāya the mantra given by Nār. is a Jalābhimantraṇa mantra. (iii) The accused person should address the water by the mantra 'Satyena Mābhirakṣa' etc. given by Yāj.

(e) Retrial

According to Kāt. if the person is bitten by any of the animals in the water, he should

be asked to plunge again after having marked the signs of bite on his body.

Since other writers have clearly mentioned that the water selected for the ordeal must be void of any animals they do not advise any retrial.

(5) Signs of the success or the failure of the trial:

Following are the conditions which declare the accused person guilty—(i) If the person bringing arrow sees any of the limbs of the accused person plunged in the water such as ears, nose etc. (but not so if he sees the head) (ii) If the person emerges from the water from the place other than where he actually had plunged. It is noted above that the trials are conducted in the steady waters. Fast flowing rivers or sea were avoided. Hence, finding the person at a place other than where he actually plunged is a sign of the guilt of the person.

So far we have seen the water ordeal as discussed in the Dh. works. It is rather curious that Devaṇṇabhaṭṭa, the author of SC (1150 to 1225 A.D.) has boldly refused to discuss the ordeal on the ground that it was out of practice.

Dr. keith prefers to view Devaṇṇabhaṭṭa's statement as applicable 'only to the schools of lawyers in whose circle that work was was produced.'

It however appears that the remarks of Devaṇṇabhaṭṭa should not be taken literally. If he really wanted to drop the discussion of the water and poison ordeals, he should have done it at all the places, but we find that he does consider these two ordeals while discussing the other aspects of the ordeals such as the values of the offences or the suitability of the season.

Moreover, we find that the claim made by SC is straightway rejected by Pratāparudradeva, the author of SV, by pointing out that the water ordeal was particularly practised in Utkala (Orissa) while the poison was popular in the Saurasena and Magadha.

It is however quite certain that the water ordeal was lagging behind as compared to the other forms of the ordeal. The trend probably started right from Yāj. who dropped its reference in the list of serious ordeals that could be valued over 1000 Paṇas (II. 99).

The Kkh devotes one complete chapter for describing various ordeals. In the beginning of the chapter, it makes a pratijñā of discussing 8 ordeals. The water ordeal is absent in the list of the ordeals taken here for the discussion. The Purāṇa has used the very Dharmaśāstra-phraseology in describing these ordeals. It is thus acquainted with Dh. material on the subject. Absence of the water ordeal in this list thus becomes more conspicuous. It must be pointed out that after formally concluding the chapter with the words 'Evamaṣṭavidham divyam' etc. the writer adds by way of an appendix, two forms of the water ordeal. Out of these two varieties, the first happens to be 'the oath of water' referred to by the Smṛtisāra, while the second one is the regular ordeal of water discussed by the Dh. writers. If we are to judge the importance of the subject by the order in which it is taken for discussion, we find that the water ordeal comes here last, that also not in the regular discussion undertaken

in the chapter, but only added last by the way of a passing reference.

It appears that the water ordeal was deviating from its form prescribed in the Dh. works. We find references to the water ordeal through all the centuries. Yuan Chwang has of course described it, but as we have observed elsewhere (Vide Chapter VII), we may not take his account as reliable since none of his ordeals tallies with any of the Indian ordeals described in the Dh. works. Alberuni describes it (Vide Chapter VII). It is rather curious to observe that though other ordeals described by Alberuni closely follow the corresponding Dh. ordeals, water ordeal forms an exception. Alberuni's description shows that the water ordeal was deviating from its prescribed form. We can take Devaṇṇabhaṭṭa and Alberuni as contemporaries. It is possible that Devaṇṇabhaṭṭa also must have noted the changing form of the method and must have been discouraged in describing the method which was getting out of use.

Water ordeal was, however, not completely dead as Devaṇṇabhaṭṭa claims. (i) Śriharṣa has referred to the ordeals in his Naiṣadhiyacaritam and the ordeals he stresses in particular are the ordeals of fire and water. It is true that Śriharṣa has not described the actual methods of these ordeals and, therefore, we are not able to know the actual forms intended by him, but the fact that he is a Śāstrakavi leads us to believe that he must be referring to these ordeals as described in the Śāstra (ii) We have already referred to the counter-claim made by Pratāparudradeva in his SV. Pratāparudradeva was a king directly concerned with the administration of justice. (iii) It is very interesting to note that Ain-e-Akabari describes the Jala ordeal in its very Dh. form (Vide Chapter VII). (iv) A local variety of Jaladivya practised at Benares is noticed by Ali Ibrahim Khan as follows:— 'In the villages near Benares, it is the practice for the person who is to be tried by this kind or ordeal to stand in water upto his navel and then holding the foot of a Brāhmana, to dive under it as long as a man can walk fifty paces very gently. If, before the man has walked thus far, the accused rises above the water, he is condemned, if not, acquitted.'

In the later period we find that this ordeal is developed in two different directions. In one case it is made simpler, in the other, rather difficult.

(A)(i) Nadici kriyā practised during the Maratha period is a simpler modification of the ordeal (For details vide Chapter VII).

(ii) The accused person is required to stand in a river at some holy place and simply declare his intentions. This ordeal is practised in many tribes of India.

(B) In the second variety, the person enters into fast running water with frightening animals inside the water. This was popular in south India and had various forms, the main variety was that of the crocodile ordeal.

JAIMINIYAS : THE RULES OF DOMESTIC CEREMONIES

Now, being about to carry forward the fire (to the place where lie is to perform the domestic ritual, he should prepare with sand or clay) a piece of ground sloping towards

the north-east (measuring a square cubit); having sprinkled over with water this sthandila, he should in its centre (with a grass stalk) make the mark by drawing one line from west to east and another touching the first, at its west side, from south to north ; then three lines in the middle from west to east.' Having sprinkled it over. (with water), he should establish thereon the fire with the formula : "Bhuh, bhuvah, svah". This making the mark must at all times be performed (when a fire is established for ritual purposes).

Now we shall explain the sacrifices of cooked food. They are huta (i. e. consisting of a simple burnt-offering), ahuta (devoid of any burnt-offering), prahuta (preceded by a burnt-offering), and prasita (i. e. where food is eaten). The burnt-offerings are performed in one single fire (not in three, as is the case with the Vedic ritual).

Regularly prescribed are (here) the wearing of the upper garment above the left shoulder and beneath the right arm-pit, and the sipping of water.

These offerings follow the rite of the new and full-moon sacrifices (i. e. the now following description must be completed according to this rite), or they are self-dependent.

To the south of the fire and near it he places a vessel (filled with rice etc., destined as sacrificial fee for the officiating priest) and a sacrificial ladle filled with water ; to the north of the fire the fuel and Kusa grass.

After being sprinkled once with the formula ; "On the instigation of god Savitr I sprinkle thee with the arms of the Savings with the hands of Puran," and twice without muttering the formula, the fuel and grass have been put down ready. The fuel should be of palasa or khadira wood. If he cannot obtain this wood, he should take the fuel from any tree with the exception of Vibhitaka, tilvaka, badhaka, nimba, rajavriksa, salmali, aralu, dadhittha, kovidara and slesmataka.' If kusa grass cannot be obtained, any kind of grass is allowed with the exception of suka-grass, saccharum reed, usira, balbaja, mutava, nala and suntha. The flowers (used for ornamenting the fire-stead) should be white. If he cannot obtain these, fragrant flowers of any other colour are to be used, with the exception of Japarupa, kakuttha, candi and kurandaka.

There are four normal substitutes of the clarified melted butter (the "ghee", destined for the offerings) viz. fresh butter (?), milk (?), sour coagulated milk, and fresh milk.

Behind the fire should take place the rinsing of the mouth. Thrice he should rinse the mouth, twice wipe (his lips with the base of the thumb of the right hand).

Once he should touch water : having sprinkled his feet, he should touch with water the head and the organs of sense in the head (i. e. eyes, nose, ears).

Having touched water he mutters, sitting down behind the fire on which fuel has been put, whilst touching the earth, the formula: "Here we partake of the earth; here the prosperous, here the auspicious. Repel the adversaries, obtain thee another one's wealth," and if it is night, the same formula, but closing with : "another one's riches."

With the triplet, beginning ; "Let us prepare this song" he should wipe with his wet hand around the fire, or thrice with the first of these three verses.

Having seized a prastara (i. e. a bundle of darbha grass taken from the barhis), he strews (this grass) round (the fire) at every quarter of the sky, beginning in the south-east, (first from east to west, then from west to north, from north to east, from east to south), covering the roots (of one layer) with the tips (of the next). Or he strews the grass first at the west side and lays down two rows of grass in easterly direction at the southern and northern ends of the westerly row, so that they join before the fire and form a triangle. At the point, where these last two rows are connected (i. e. at the east side, before the fire) the tips of the southern blades of grass lie above those of the northern.

From the prastara lie takes two (grass-stalks as) "purifiers," measuring a span, even, with unbroken tips, and which do not bear a young shoot in thein. Holding them between thumb and ring-finger, he cuts them (to obtain the required length) with any other instrument than his fingernails, muttering the formula : "You two are purifiers, sacred to Visnu. Three times he^ should stroke them upward with water, muttering the formula: "Through the mind of Visnu you are purified": once with this formula, twice silently. Holding (in his left hand) the "purifiers"' above a vessel, he pours in it (with the right hand) the ghee (destined for the sacrifice). Then he thrusts some burning coals out of the fire in northerly direction, puts (the vessel with the ghee) thereon, holds two flaming young stalks of darbha grass above it, throws the two stalks into (the fire), moves thrice a burning grass stalk from left to right around the vessel, removes it from the fire in northerly direction, thrusts the burning coals back into the fire and purifies thrice with the northward-pointed purifiers the ghee, the sacrificial substance (destined for the chief oblation), the pranita-water, and the sacrificial ladle, muttering (each time) the formula:" "May the god Savitr purify thee with unimpaired purifier, with the rays of the good Sun."' Of the ghee (the purifying takes place) whilst moving the two purihers back (only, and not forward through the ghee). This purifying is performed once with the formula, twice silently.

Having carried the pranita-water to the north of the file, having covered it with durva-grass, having put down the prastara (i. e. the bundle of grass) to the south of the fire, having put the two purifiers above the bundle of grass, he mutters the virupaksa formula : Om ! heat, lustre, truth, all-soul, firmness, righteousness, vitality, renunciation, Brahma, brahman ; to these I report, may these favour me. Bhuh, bhuvah, svah, om ! The great all-soul I ascend. Thou art the one with deformed eyes, of shining teeth (?) Thy couch is on the leaf, thy dwelling is in the atmosphere, golden is thy shed. There those hearts of the Gods are deposited inside an iron jar. Strong (art thou) and bestowing strength. Protect us, do not neglect us. In truth, thou hast twelve sons; these, performing for thee year after year a desire-granting sacrifice, again practise chastity. Thou art the brahmin of the Gods, I am the brahmin of men : the brahmin resorts : to the brahmin : to thee I resort. When I mutter the formula, do not obstruct my muttering, when I offer, do not obstruct my offering, when I perform a sacrificial action, do not obstruct my action. To thee I resort. Instigated by thee I will perform here the sacrificial action. May this thrive for me. Obeisance to the God of the deformed eyes, to the one of shining teeth, to the son of Brahman, to the Highest, the Best, the unfailing, the Lord of sacrificial action !"

He should pour the contents of the sruva-ladle into the pranita-water, hold the sruva above the lire (to expel all evil influence), sweep it clean by means of darbha-grass stalks, throw these stalks after sprinkling them into the fire, bend his right knee, sprinkle the ghee after having removed from it anything unfit (or sacrifice that might have fallen into it, e. g. a wood fretter, a tryambakafly, a bee, an ant, up to five, purify it (with the two 'purifiers ') and then make the offering. He lays around (the fire) the (three) enclosing pegs, touching each other with their extremities : the middle and thickest one on the west-, the longest one on the south, the smallest one on the north side.

On the south side of the file he pours a pail of water with the formula : "Aditi, give thy consent", on the west side with : "Anumati, give thy consent", on the north side with : "Sarasvatt, give thy consent." Then from left to right he thrice pours water around the fire, the first time with the formula : "God Savitr speed the sacrifice, speed the lord of the sacrifice unto good fortune. May the heavenly, thought-cleansing Gandharva cleanse our thought. May the Lord of speech render our voice palatable", the second and third time silently.

Having taken a piece of fuel and having by means of the ladle drawn ghee, lie anoints the stick and puts it on the file with the formula : "This fuel is thy self, Jatavedas ! Thereby thou shalt grow and be inflamed. Inflame us, and make us grow ; through offspring, cattle, holy lustre, and through the enjoyment of food make us increase. Svaha !

The two agharas he pours out in thought', uninterrupted, crossways : the first with the formula : "To, Prajapati. Svaha !" approaching the sruva on the inside of the northern junction of the pegs ; the second with the formula: "To Indra. Svaha !" approaching the sruva on the inside of the southern Junction.

Having poured out the agharas, he offers the two portions of ghee, in the northern part of the fire with the formula : "To Agni, Svaha !", in the southern part with the formula : -To Soma. Svaha !"

Between them is the space for the (chief) oblations (of the caru): "Bhuh, Svaha ! Bhuvah, Svaha ! Svah, Svaha! Bhuh Bhuvah Svah. Svaha !" (after these four) on the day of full-moon : "To Agni ; to Agni and Soma", on the day of new-moon ; "To Agni ; to Indra and Agni. '

In pouring out the oblations he avoids to pour out a subsequent one on the place of a previous one, in northeastern direction, backward of the spot where the oblation to Agni svistakrt is performed.

Regularly prescribed is (the oblation to) Agni svistakrt towards the east' at the end (of each sacrifice), except at a vapa-offering and a ghee-offering?

After the oblation to Agni svistakrt lie does not (as is done otherwise, see the next sentence) again pour ghee (on what is left of the caru).

He "spreads under" once in the sruva (i. e. he first pours some ghee into the ladle), cuts twice from the sacrificial substance (the caru), pours once ghee over (the cuttings in the

sruva), and pours again some ghee (on what is left of the; caru).

With the thumb and the two fingers (next to the thumb), which are joined at the fleshy side, he cuts off twice from the sacrificial substance. For descendant of the Rsi Jamadagni he pours twice ghee over the cuttings and then pours again ghee over what is left of the sacrificial substance. For this is the fivefold cutting off. Or (instead of thumb and two fingers) he may use (to cut off the portions to be offered) either, his (fore-) finger or a bunch of grass.

This is everywhere the mode of sacrificing.

He then takes the prastara together with the purifiers and anoints its points in the sruva with the formula: "Anoint thee in the sky," its middle part in the ghee with the formula : "Anoint thee in the atmosphere", its roots in the sacrificial substance with the formula : "Anoint thee on the earth."

Having torn a grass stalk out of the prastara with the formula : "For long life thee," he throws the prastara into the fire, with the formula; "For Agni, for Anumati. Svaha '" The grass stalk he throws after it with the formula : "Fetter my enemy and burn him. Svaha !"

He puts on the fire sticks of fuel anointed with ghee with *the* formula : "For prosperity. Svaha !" and taking hold of the earth he should touch the vital organs in his head.

Having touched water he performs the twelve prayascitta oblations : "For intuition. Svaha ! (1). For desire, Svaha ! (2). For prospering. Svaha ! (3). By the verse make the chaunt to prosper, by the gayatra the rathaptara, the brhat that has the gayatra as its track. Svaha 1 (4). This god Jatavedas is borne upwards by the rays ; the sun, for all to see. Svaha! (5). The radiant splendour of the gods has arisen, the eye of Mitra, Varuna, and Agni ; it has filled the earth, the sky, the atmosphere : the sun, the soul of all that moves and stands. Svaha ! (6). Out of the darkness, gazing on the higher light, we have come to the god among the gods to Surya, the highest light. Svaha ! (7). Prajapati, none other than thou has encompassed all these beings ; for what we sacrifice unto thee, be that ours ; may we be the lords of wealth. Svaha i (8). Bhuh. Svaha ! (9). Bhuvah. Svaha ! (10). Svah. Śvaha ! (11) Bhuh, Bhuvah, Svah ; Svaha ! (12).

Having brought the strewn darbha-grass and having put tins on the pranita-water and on the sruva, he pours the water out (of the sruva into the pranita ?), whilst muttering (he formula : "Thou art the real ; be real for me. Thou art the all ; be all for me. Thou art full; be full for me. Thou art imperishable ; perish not for me."

He then pours out the pranita-water successively in the direction of the quarters ; in the easterly direction with the formula : "May the gods, the priests, cleanse themselves' ; in the southern direction-whilst wearing his upper-garment on the right shoulder and beneath the left arm-pit-with the formula : "May the months, the Fathers, cleanse themselves", in the western direction-having again shifted his garment above the left shoulder and beneath the right arm-pit, and having touched water—with the formula :

May the house, the cattle cleanse themselves; in the northern direction with the for-

mula: "May the waters, the plants, the trees cleanse themselves"; in the upward direction with the formula: "May the sacrifice, the year, the lord of the sacrifice cleanse himself." Having poured out (the rest of the) water (on the earth) with the verse : "To the ocean I send you, the imperishable (waters); go back to your source. May I not suffer loss in my offspring, may my sap not be shed", he should wipe his eyes with thumb and ringfinger with the verse : "The sweet of thee, Sarasvati, that is in the waters, in the cows, in the horses, therewith, O Sarasvati with your swift horses, anoint my face."

Having thrown the darbha grass and the pegs into the fire, and having averted all evil, by singing the Vamadevya chaunt he should thrice sprinkle water around the fire, besprinkling at the same time the (rest of the) sacrificial substance, from left to right ; the closing words of the formula (cp. I. 3) lie should alter in this way : "...thou hast given the consent:... thou hast sped."

The full vessel put *down* near the fire (cp. I.) is the sacrificial fee.

At the sacrifices of cooked food the sacrificial tee is either in accordance with the faith (sraddha) (of the performer), our it consists in the full vessel.

THE CEREMONY TO SECURE THE BIRTH OF A MALE CHILD.

The ceremony to secure the birth of a male child takes place in the third month (of the pregnancy), except in the case of a woman who has a child.'

Having boiled a mess of rice in ghee, or having consecrated by the sacrificial formula, as is done with a sthalt paka, a portion of ghee mixed with coagulated milk, he should offer it with the purusasukta.

Having shaped two beans and a barley corn into the male organ of procreation, he should give it her to eat together with a drop of sour milk with the formula (which should be muttered by the pregnant woman): "Prajapati, the male, the overlord, may he give me a long living glorious son. May I together with my husband bring forth living children."

Then having fastened a nyagrodha shoot, which has fruits, with two threads, one white, one red, she should bear it on her 'throat.

This they, say, is a sure means to get a son. A garment is the sacrificial fee.

/The Sraddha preceding every sacrament.

Now we shall explain the sraddha which on the day previous (to any festivity) must be performed in honour of the glad-faced Fathers [the Manes). It finds place in the fortnight of the waxing, moon, under a propitious naksatra. On the preceding day or on the day itself having dressed food he invites clean and learned brahmins.

Being clean, and having put on a white, not wet garment, wearing his uppergarment above the left shoulder and beneath the right arm-pit, having sipped water, he offers bali offerings consisting of four white substances: thick sour milk, unhusked rice, perfume, white flowers, having spread darbha grass on the fire place with the tips to the east, say-

ing: "To Agni obeisance ! To Soma, obeisance ! To Prajapati, obeisance ! To the allgods, obeisance! To the seers, obeisance ! To the Bhutas, obeisance! To the Manes, obeisance ! To all the gods, obeisance I" To the brahmins he gives food fit for offering, together with thick sour milk, or, according to another view, together with food and eatables such as beans, fish, flesh. Then he takes the following four substances : rice, barley, flowers and mustard, and together with these a jar filled with water, saying to the brahmins : "Compose your mind, be propitious,' and then with the syllable om : "Let the glad-faced Manes be pleased." In the same way the others should answer, conformably to each wish.

THE PARTING; OF THE HAIR

The parting of the pregnant wife's hair he should perform in the 4th., 6th. or 8th. month, during the bright half of the moon, under an auspicious naksatra, when the moon stands in conjunction with hasta or with a subsequent naksatra'

After he has boiled a sthalipaka (a mess of rice) mixed with sesamum and mudga beans, he should sacrifice, while she standing behind lays her hand on his shoulder, with the "great words" and with the verse addressed to Prajapati. After he has made her sit down to the west of the fire on a splendid seat or on a mattress of eraka grass covered over with a new garment, he should by means of the white-spotted part of a porcupine's quill that has three white spots, part her hair right over the nose up to the head (i. e. beginning at the forehead and ending at the top of the head) with the formula: "For outbreathing thee ; for inbreathing thee ; for throughbreathing thee." Having adorned the tips of her-hair on the right side with wreath and in the same way on the left side, he should fill a vessel of white brass with water mixed with gold dust, and, while causing her to look at this water, ask her ; "Him, Bhuh, bhuvah, svah ! What do you see ?" The other answers: "Children, cattle and good luck for me, long life for my husband." A garment or a piece of gold is the sacrificial fee.

THE CEREMONY FOR THE NEW BORN CHILD

When a boy has been born the ceremony of the new born child takes place. Before the sucking he should grind to powder some rice and barley by means of a piece of gold and cause the child to eat (of this powder) with the formula: "Here is food, here sap, here nectar together with breath ; thy mother is the earth, thy father the sky." Live a hundred autumns, look a hundred autumns." Then he speaks over him the verse : "From limb to limb thou art produced, out of the heart thou art born. Thou, verily, art the self, called son, so live a hundred autumns, see a hundred autumns. He then consigns him : "To the day I consign thee ; let the day consign thee to the night ; let the night consign thee to day and night together ; let day and night consign thee to the half-months ; let the half months consign thee to the months ; let the months consign thee to the seasons ; let the seasons consign thee to the year ; let the year consign thee to old age, to death."—Then he says : "Who art thou ? Who of many art thou ?" (and): "Enter upon the month that belongs to the

Lord of days, N. N." Then he gives him the secret name with the formula : "Veda art thou", he then kisses him on the head with the formula : "He a stone, be an axe, be insuperable gold; with the cattle's himkara I kiss thee." In the same way he kisses the head of his sons after returning from a journey.

During ten days he should sacrifice into a fire mustard seed mixed with rice husks, with the two verses: "To Sanda, to Marka, to Upavira. Let Saundikera, Ulukhala. Malimluca, Dunasi, Cyavana vanish hence. Svaha.—Let Alikhat, Vilikhat, Animis, Kimvadanta, Upasruti, Kumbhin, the foe of Aryaman, Patrapan', Nipunahan, Antrimukha, Sarsaparuna vanish hence. Svaha."

During a period of ten days husband and wife are impure on account of the childbirth. At the end of this period after having bathed she rises (from the childbed).

The giving of the name

Next the giving of the name. It takes place in the first half of the month under an auspicious naksatra, or on the twelfth day The father or the teacher (acarya) should give the name. The father should sit down with the child on, his lap, after having wrapped it in a new garment. He should give him a two- or three- or foursyllabic name, beginning with a sonant, with a semivowel in it, derived from the name of the naksatra (with which the birth has coincided) of the deity (which presides over this naksatra), (or) derived from the (i. e. the father's) name, containing no taddhita (suffix), ending in a for a female child ; or the name may be appropriate.—(On this occasion) and on all occasions when a sacrifice on behalf of the boy is performed, he sacrifices to the naksatra, to the deity of the naksatra and to the weekday (of the birth). Moreover he sacrifices to the following eight deities : to Agni, to Dhanvantari, to Prajapati, to Indra, to the Vasus, to the Rudras, to the Adityas, to the Allgods. If these are well honored with sacrifice, all the deities are propitious.

The first feeding with solid food

Now the (first) feeding with solid food. Having fed in the first half of the month under an auspicious naksatra a number of brahmins, he should cause the child to partake of food fit for sacrifices whilst muttering the verse : "Lord of food, give us food painless and strong, bring forward the giver, bestow vigour on us : on men and animals.

The tonsure of the child's head

In the third year (after the day of the birth) she should shape the twisted liar (of his son) (i. e. he should perform the cudakarman), according to some authorities in the third year reckoned from the beginning of pregnancy. During the northern course of the sun, in the first half the month, under an auspicious naksatra having caused a number of brahmins to pronounce their blessing, he should in the afternoon carry forward the fire and put down to the south of the fire four vessels : two filled with rice and barley on both, sides (i.

e. the vessel with rice to the west, the one filled with barley to the east), between these two other vessels, one filled with sesamum, one filled with beans.

While the boy, who has sipped water, touches him from behind, he should sacrifice (four times ghee) with the "great words" and a fifth time with the Virupaksa formula.

They pour out the water decocted' from the various kinds of herbs—the rice, barley, sesamum and beans (above mentioned) are the "various kinds of herbs."—Then he takes up the razor with the verse : "Hither has come Savitr with the razor approved of by the Allgods, by the Maruts ; may lie, Visvakarman, be propitious unto us ; do ye protect us ever with prosperity." He takes the water with the verse : "Come, Vayu, with the hot water; may Aditi shave the hair." With the verse : "May the waters moisten thee for life, for old age, for splendour" he should moisten the hair near the right ear. In this (hair) he puts three darbha blades or a single one. He should hold (the hair and the blade in his left hand with the verse: "Prajapati hold again, again, for good shaving." Having touched with a mirror thrice (the hairs and the grass blades) in upwind direction, he should shave oft (some hair together with parts of the blades) by means of the razor, muttering (the three mantras): "With the razor, wherewith the creator has shaved (the head) of Brhaspati, of Agni, of Indra, for the sake of long life, therewith I shave thy (head), for the sake of long life, of glory, and of welfare." With the razor, wherewith Prajapati has shaved (the head) for the Maruts householders, therewith I shave thy (head) for the sake of long life, of glory, and of welfare. With the razor wherewith this one may go about further, and may long see the nun, therewith I shave thy (head) for the sake of long life, of glory, and of welfare." In the same way the back and the left side of the head. At each mantra he should deposit the hair and the rest of the darbha blades on bull's dung, which should not be put on the bare ground ; if the boy belongs to the brahmin caste, this bull's dung should be put to the east, if he belongs to the two other castes, behind. He then should hand over the razor to the barber with the mantra: "When thou shearest with the...razor, O barber, make the limbs clean ; do not injure the life, the splendour, O barber." (The barber then shaves the hair) according to the custom of the Gotra or family (of the boy).

After the boy has been washed, he (i. e. the father or the acarya) should perform the prayascitta offerings (cp.I.4). By the...... act, and without mantras the ritual is performed for a female child. If it is performed with the mantras, the sacrifice (of the principal oblations) should be performed afterwards.

Then he takes hold of his (i. e. the boy's) head and mutters the verse : "The threefold age of Kasyapa, Jamadagnis' threefold age, the threefold age that belongs to the gods, may that threefold age belong to thee."

The hair lie should bury in a cornfield or in a cowshed. The person who arranges the hair should take the full vessels. A cow constitutes the sacrificial fee.

The Initiation of the student

In the 7th year he should initiate a brahmin—in the 5th, one that is desirous of spiritual

lustre, in the 9th, one that is desirous of attaining long life-, in the 11th a ksatriya, in the 12th a vaisya. He should not perform the initiation after he has passed his l6th year. "For (in this case) lie becomes of shattered testicles, equal to a sudra" it is said in holy tradition).

Then (viz. when he has readied this age) they bring him (to his spiritual teacher) after he has bathed, has been adorned, his eyes have been anointed, and the barber has made his toilette.

He should put on him a new garment with one of the three following verses, according to his caste : "We clothe, O Soma, this (boy) with the holy word, for the sake of great learning, so that it (i. e. the garment) may lead him to old age' and he may long watch over learning. Live thou a hundred autumns, see thou a hundred autumns.—We clothe, O Indra, this (boy) with the holy word, for the sake of great power, so that it may lead him to old age and he may long watch over power. Live thou a hundred autumns. — We cloth, O Posa, this (boy) with the holy word, for the sake of great wealth, so that it may lead him to old age and he may long watch over wealth. Live thou a hundred autumns, see thou a hundred autumns."

Now the teacher, having made him sit down to the west of the fire with his face directed toward the cast, and wearing his upper garment above the left shoulder and beneath the right arm-pit, makes him rinse his mouth. Then he makes him stand up, strews northward pointed darbha grass to the north of the (ire, puts on tins grass an unbroken stone, and causes him to step with his right foot on this stone with the verse ; "Mount here on the stone, like the stone be thou firm ; press away thy enemy, but let not thy enemy slay thee."

Now the teacher causes him to sit down to the west the fire with his lace turned to the east, and himself sits to the left (of the boy) and sacrifices, whilst the boy takes holds of him, with the "great words" and the oblations to the Vedas, pournig after each formula the dregs of each oblation into the mouth of the boy : "Bhuh, the Rk-verses. Svaha ! Bhuvah; the Yajus formulae, Svaha ! Svah, the Saman-chaunts. Svaha !"

When the boy has swallowed the dregs and rinsed his month, the teacher causes him to stand up, and leads him around the fire, turning his light side to it, with the formula: "Obeisance to the Wind, obeisance be made to Agni, obeisance to Earth, obeisance to the Plants, obeisance I make to you, to the unseen Great One" (and he addresses the boy with the words): "Study thou, who art going to study" (to which the boy answers): "Imparter, So—and so, impart to So-and-so the Veda."

Now the teacher causes him to stand to the west of the fire with his face turned toward the cast, whilst he him self stands before him with his face turned toward the west. Then they join their open hands together, the teacher holding his own above those of the boy. The hands of the teacher are now filled by some other person with water, so that the water trickling down, fills the hands of the other (i. e. the boy). He (i. e. the boy) directs him : "I have come hither for studentship ; initiate me." "Who by name art thou ?" Answering : "So-and-so ' he (the boy) should mention his own name. Now the teacher mutters: "Him!

Bhuh, bhuval;, svah ! With him who comes hither we have come together. Drive ye thoroughly away death'. May we walk. unhurt ; may this one walk in bliss." He then seizes with his right hand his (i. e. the boy's) right hand, with the formula ; "Indra has seized thy hand, Pusan has seized thy hand, Aryaman has seized thy hand, Savitri has seized thy hand, Aryaman has seized thy hand. Thou art Mitra by rights ; Agni is thy teacher." Having touched (the place of) his navel, he mutters ; "Thou art the knot of the breaths ; do not loosen thyself; make not an opening to death, thou that art free from (premature) death.'" Having gradually passed with his hand along his right shoulder, he mutters, whilst touching (the place of) his heart: "In my will be thy heart; after my will shall thy will follow ; in my word thou shall rejoice with all thy will ; let Brhaspati join thee to me."

He now consigns him : "To Agni I consign thee. To Vayu I consign thee. To god Savitr I consign thee. To the Waters I consign thee. To the Plants I consign thee. To all the Gods I consign thee. To all the Beings I consign thee, tor the sake of security."

Now he directs him : "A student art thou. Put fuel on (the fire). Drink water (as thy only beverage). Do the service. Do not sleep in the day-time."

He (i. e. the student) puts pieces of fuel anointed with ghee on the fire with the following mantras, one after each svaha ; "To Agni, to the great Jatavedas, I have brought a piece of wood. As thou, Agni, art inflamed through the piece of wood, thus may I prosper through long life, splendour, vigour, gift, insight, wisdom, offspring, cattle, holy lustre, the enjoyment of food, and riches. Svaha. —The insight that dwells with the Apsaras, the mind that dwells with the Gandharvas, the divine insight and that which is born from men : May that insight, the fragrant one, rejoice me. Svaha.— Rhuh, svaha.—Bhuvah, svaha.—Svah, svaha.—Bhuh, bhuvah, svah, Svaha.

He (i. e. the student) ties a girdle round himself with the verses : "Here protecting me from evil words, purifying my kind as a purifier, bringing strength to exhalation and inhalation, has come to me the sisterly goddess, this blessed girdle.—A protector of right, a defender of mortification, slaying the goblins, overpowering the foes : do thou, O blessed girdle, surround me from all sides ; may we, that wear thee, not perish." The girdle consists of munja-grass for a brahmin, of murva-grass for a ksatriya, of tamala-hurk mixed with munja-grass for a vaisya, or for all of munja-grass.

Now as for the garments : the under-garment consists (for all) of linen or hemp ; the uppergarment for a brahmin is made of the skin of an antelope, for a ksatriya of the rurudeer, for a Vaisya of a goat, or for all of the antelope.

With the formula: "Evil averting art thou" he should give the staff, reaching up to the nose, of palasa-wood for a brahmin, ot bilva-wood for one who is desirous of spiritual lustre, of nyagrodha-wood for a ksatriya, of udumbara-wood for a Vaisya, or for all of palasa-wood.

He should beg food first of his mother, then of other friendly disposed women. He should beg, if he is a brahmin, with the word 'Lady' at the beginning ; "Lady, give alms"; with this word in the middle, if he is a Ksatriya ; "Give, Lady, alms"; with this word at the

end, if he is a Vaisya; "Give alms, Lady" not emphasizing (i. e. speaking nearly inaudibly) the last syllalle of the word bhiksam (alms) and of the word "give" (dehl). Or all may beg with the word "Lady" at the beginning.

When something abnormal (something to be atoned for) occurs between the act of assuming the garment and of begging alms), he should cause him to sip water with the formula: "You-are living, bestow life on him. Waters ye by name, immortal ones are ye by name ; svadha are ye be name ; of you, being such, may 1 partake ; receive me into favour ; he auspicious to me. Obeisance to you, do not hurt me."

The begged food is brought to the teacher.

After three days, or on the same day, he (i. e. the teacher) should recite to the student the verse addressed to Savitri, to the west of the fire ; first by verse quarters, then by versehalves, then enfire. When the pupil has learned the verse and has (by learning the first verse of the Rgveda, the first chaunt of the Samaveda, the first formula of the Yajurveda) begun the (study of the) Vedas, he puts on the fire sticks of wood anointed with ghee, with the formula ; "Agni, lord of the observances, I shall keep the observance, may I be equal to it, may I succeed in it. Svaha! Vayu, lord of observances etc... Svaha ! Aditya, lord of the observances etc...Svaha ! Lord of the observances, ruling over the observances, etc...Svaha!" This instruction in the performance of the observances is everywhere practised (where an occasion presents itself). At the close of the period during which the observances are kept, he should alter the formula, so as to say (in stead of : "I shall keep,... may I be equal,...may I succeed): "I have kept,...I have been equal,... I have succeeded."

Then he instructs him (i. e. the student): "Be a student of the Veda, subject to the teacher, subdued, lying on the ground, bearing the staff, the girdle, the antelope-hide, the matted hair abstaining fruin women, falsehood, honey, meat, perfume, garlands." During three days he eats no pungent or saline food.

After the lapse of the three days he should leave the village in eastern or northern direction go to a palasa tree, anoint it with "the great words," sacrifice a mess of boiled rice (at the foot of the tree), throw away his sacred thread, his staff, etc., and return (to the village).' The sacrificial fee consists of a cow.

The twilight devotion

In the evening and the morning he should, being pure, at the brink of the water (i. e. on a shore, a bank) with a purifier (i. e. a grass stalk) in his hand, wash himself with water with the three verses, beginning: "You, waters, are",' with the four verses, beginning : "May tin's gladdening one cross""; the vamadevya chaunt (comes) at the end. Sitting on a pure spot on darbha grass, holding, darbha grass in his hand, directed toward the west, restraining his speech, he should meditate on the evening twilight until the appearance of the stars. When the stars have appeared, he should, after having thrice restrained his breath, repeat the verse addressed to Savitr a thousand times or a hundred times, (hut) at least ten times. He then addresses to the fire the verse beginning : "Agni, be 'thou our nearest'"; to

Varuna the verse beginning : "Thou art Varuna and Mitra". In the same way in the morning, but now directed toward the last, and be addresses to the Sun the verse beginning ; "Out of the darkness" and to Mitra the verse beginning : "To Mitra, to Aryaman." If the sun should rise or set while he is sleeping, he should repeat mentally the verse addressed to Savitr during the rest of that (day or night). This is the atonement in this case.

The opening of the annual course of study

On the day of full-moon of Sravana or Prausthapada, under the naksatra Hasta, the opening ceremony ot the annual term of Veda-study (is performed). Having thrice restrained his breath and having sipped water, all (the students) mutter the "fore muttering" : "May it be ours in common, may it enjoy us in common, may it be efficacious to us in common ; may no hatred spring up between us ; may it be efficacious to all of us." To them he (i. e. the teacher) should recite the verse addressed to Savitr in the way as described in the upanayana (ch. 12) and mentally the Saviti-chaunt' and the one composed on the verse : "Sonia the King.'" When they have learned the chandas part (of the Samaveda, i. e. its first part, containing the three parvans of the; agni-, india-, and pavamana-verse), beginning at the beginning and as much as is suitable (i. e. at least one verse with its chaunt), he sacrifices nine offerings of enfire barley-corns and thick sour milk: to the Rsis (who have "seen" the diverse verses and chaunts that have been learnt) (l); to the Deities (to which the versees are addressed) (2); to the Metre (of these verses) (3); to the verses (4); to the Formulae (contained in brahmana and sutra) (5); to the chaunts (6); with the verse, beginning: "The verse, the chaunt, we revere" (7); with the verse, beginning : "The Lord of the seat, the wonderful" (8) and with the verse, beginning : "The one who gives insight'" (9). Then he (i. e. each student ?) gratifies (with a libation of water) the first six already mentioned groups (the Rsis, the Deities, etc.), then his (present ?) teacher, and then the following thirteen (ancient) Teachers : Talavakara, Satya-mugra, Ranayani, Durvasas, Bhaguri, Gaurundi, Gaurgulavi, Bhagavat Aupamanyava, Karadi, Savaini, Gargya, Varsa-ganya and Daivantya. Having muttered the two verses, beginning ; "Him who possesses grain'" and : "To Dadhikrftvan" over the rest of the sacrificial substance, they eat the remnants and study during the forenoon. When the study of the part sacred to Agni (of the samaveda arcika) has been completed, a he-goat is given as fee ; after the part sacred to Indra, a tram; after the part sacred to Pavamana Soma, a cow.

He (i. e. the newly initiated pupil) should entertain (his teacher) and his fellow students, who have come together.

On the day sacred to Savitr, and at the leaving off (the studying the Veda) they wait, one night together with the two adjoining days (i.e. the proceeding and the following days)'. He should not eat meat, should avoid sraddhas, should not shave the hair on his body, should not have intercourse with women ; his wife however, he may approach when she has her monthly periods. These observances belong to the rainy season and the autumn, according to some authorities they last (only) half a month.

The ending of the term of study

On the day of the full-moon of Taisa they leave off (studying the Veda). Having left off studying with the formula : "May the Metres, that increase each by four syllables, repose duly in the Vedas ; may they think of us propitiously", they should, paying attention to the prescriptions of studying and not-studying and to the observances, study at discretion (?) the Veda. Thenceforward (i. e. from Taisa full-moon on), however, they, should not study if clouds rise.

The observances

The gandanika, vratika, and aupanisada-observances last one year each. During these, at the evening and at daybreak, water should he touched: he should not take food in the morning before he has touched water, and the evening, after he has touched water, he should not take food before he has put the piece of fuel on the fire. He should put fuel on, that he has taken from the forest.

The Aditya observance lasts a year. During this period he should wear one garment, should not-mount a yoked chariot, should not interpose on umbrella between himself and the sun, nor a seat and couch or sandals between himself and the earth ; he should not descend (for bathing) farther than knee-deep, except at the injunction of his teacher. During the period of the vratika observances he (i. e. the teacher) should communicate (to him) the vrata-parvan (and the arka-and dvandva-parvans), during the period of the aditvavrataka, the sukriyas, during the aupanisada period the upanisad.

To the study of the mahanamni (verses and their chaunts) are consecrated twelve, nine, six, or three years; these are the various possibilities; according to some authorities, one year, in case the mahanamnis have already been studied by his (i. e. the student's) father. During a year he should practise continence, wearing one garment, but the observances (in case he devotes to this part of the Veda one year only) are enhanced. He should stand in the day-time and sit at night. According to some his food and clothing should be dark. But because of the objection to the colour, he should rather' put on a white, not a dark (garment). At the study of all (the mahanamnis) he should touch water, for it is said that "the sakvari-verses are the water." He should not cross a river in a boat, but if his life is in danger (viz. it he would cross the river swimming), he (may cross by means of a boat, but) should touch water before (ascending) and atter (disembarking). Or he may, (before ascending and after disembarking) give drink to (some) cows, for it is said "that the sukriya-verses are the cows." He should not interpose an umbrella between himself and the rain, but walk in the rain. If he acts thus, Parjanya will send rain according to his wish.

At the close of this period of self-restraint he fasts one day and one night. Having gone to the forest and having filled a brass vessel with water in which a blyxa octandra (a plant growing in water) has been mixed, he, (i. e. the teacher) causes liirn (the student) to sit down near him, and having embraced him he should cause (the student), who keeps his eyes shut, to sing after him the three stotra-verses (i. e. the mahanamris) together with the

parts called purisha. The teacher then should get up and encircle from left to right the face of the student with a new garment. During the rest of the day the student (having returned home) should stand, holding a vessel tilled with water in his hand. During the (following) night he should sit (holding the vessel with water) restraining his speech. On the following morning he (the teacher with the pupil) should go into the forest, put fuel on the fire, bring near a calf and unloosen the garment (from the student's eyes). He (the student) should then raise the brass vessel (with water, which he still bears in his hand) and look at it with the formula : "At the waters I look down", with the formula ; "At the sun I look", he should look at the sun, with the formula : "At the light I look", at the fire, with the formula ; "At the calf I look", it the calf; having poured out the water with the verse beginning: "Some meet" he should (having returned home) take the garment, the brass vessel and the calf to his teacher. From a sthalipuka he makes burnt oblations to Visvamitra and Indra, and to the mahanamni-verses. He then should entertain his teacher and his retinue with food. A cow is the fee.

The study of the Veda lasts twelve years; reckoned from the birth onward, according to some authorities, (in which case, if he is a brahmin, the study is extended over six years only); or until he has learnt the Veda. Constantly he has to add fuel to the fire in the evening, and to go out seeking alms evening and morning. He should avoid two three-stringed objects : a three-stringed amulet and three-stringed shoes.

In the sixteenth year the godana (finds place), that means : "the cutting of the beard." The mantras are the same as those used for the tonsure (I. II). The undertaking of the observances is the same as that of the initiation (I. 12). Here, however, no new garment is prescribed. He causes to shave off all the hair of his body and to cut his nails, according to Audgahamani with the exception of his toplock. When he has been shaved, he should bathe, With the formula : "Thou art the skin (the bark) of the trees. O cleansing one, cleanse me. I bring thee near for the sake of long life, of lustre" he rubs himself with paste prepared from (the bark of) trees. With the formula: "Thou art the perfume of the trees. O sweet-scented one, make me sweet-scented among gods and men. I bring thee near for the sake of long life, of lustre" he rubs, after having bathed, his body with ointment. With the formula : "Thou art the flower of the trees. O sweet-scented one, make me (etc. a; aboye)", he fastens a garland on (his head). With the formula ; "Thou art a mirror (adarsa); may both gods and men look (adrsyasan, sic!) at me. Thou art shining, may I shine among gods and men" he should look at himself in the mirror. Having taken away the wreath he (i. e. the teacher) should give him directions (to put fuel on thu fire etc.). The ordinances (to which the student is subjected) during the years (of the study following after the godana) are treated. A cow is the fee.

The bath taken at the end of studentship

After he has studied the Veda and observed the observances, a brahmin, being about to take the (absolving) bath, gets ready the (following) requisites: a new garment, a mat of eraka-grass, paste for the bath, ointment, flowers, collrium, a mirror, two new garments, a

three-stringed amulet, a bamboo staff and two white shoes. A fully equipped barber stands near on the north side.

Having spread out the mat of eraka grass and covered it with the new garment with the fringe toward the north, he (the teacher) should cause him (i. e. the student) to sit down with his face directed toward the east and should throw his stan into the water with the formula : "Thou art the thunderbolt destined for the enemies." The girdle he should make him loosen with the verse beginning : "Unloose the highest." The girdle also he should throw into the water. The mantras (for the shaving) are the same as those of the shaving (I. 18); the shaving also takes place. He shrives (on this occasion) first his head, then his beard, then his other limbs successively ; he (the student or the teacher?) should bury the hair of his head, the hair of his beard and his nail-clippings at the root of an asvattha or udumbara-tree. With luke-warm water, holding a piece of gold between (the water and the body) he (i. e. the teacher) should bathe him with the verse : "He thou propitious and most favourable to us, and gracious, O Sarasvati; let us not be separated from sight of thee."

He should take the bath under the naksatra Rohini, this naksatra belongs to Prajapati, if he wishes to get offspring. He should take the bath under the nakshatra Mrgasiras, this naksatra belongs to Soma, if he wishes that a Soma-sacrifice may fall to his share." He should take the bath under the naksatra Tishya, this naksatra belongs to Brhaspati, and Brhaspati is the Brahman (the holy Word, the Veda), if he wishes to get spiritual lustre. He should take the bath under the naksatra Hasta, tills naksatra belongs to Savitr, if he wishes to be impelled by Savitr. He should take the bath under the naksatra Anuradhas, this naksatra belongs to Mitra, if he wishes to be dear to his friends (mitra). He should take the bath under the naksatra Sravana, this naksatra belongs to Visnu, and Visnu is the sacrifice, if he wishes that a sacrifice may fall to his share.

He (i. e. the teacher) should invest him with the new garment with the verse : "We clothe, O Soma this boy" etc. Then he should salve his eyes, first the left and then the right, with the verse beginning: "With glory me."

The three-stringed amulet, which must be made of palasa-wood if he is desirous of averting evil, he (i. e. the student) fastens to his neck with the formula : "Thou art the one averting evil", of bilva-wood, if he is desirous of spiritual lustre with the formula : "May I become possessed of spiritual lustre, ' of arka-wood, if he is desirous of getting food with the formula: "May I eat food."

With the formula ; "Thou art the Gandharva Visva-vasu; protect thou me, guard thou me"lie takes the bamboo staff.

He should put on the two shoes with the formula; "You are the leaders, lead me." First he fastens on the right one.

The observances for him are the following ; he should not wish for sport with a girl that has not readied the age of puberty, he should not run while it is raining, nor take his shoes in his own hand, nor gather fruits of the trees himself, nor go toward evening to

another viliage, neither go alone nor together with Sudras, not look into a well, not climb a tree nor a bridge, nor be seated without inteposing (something between himself and the ground), not eat food which has been brought in at the western door ; nor (prepared) food that has turned sour, nor food which has been cooked twice (i. e. lias been warmed) or which has been kept over for the night, except such as is prepared of vegetables, meat, barley, rice, flour, parched rice, juice of sugar-cane, coagulated milk, honey and ghee. He should not laugh if there is no cause for mirth, not bathe naked, not speak harsh words, avoid scandal and quarrels.

According to Aruni Gautama there are three kinds of Snatakas: the Snataka by knowledge, the Snataka by the completion of his observances, and the Snataka by knowledge and by the completion of his observances. Of these the last ranks foremost, the first two are equal (to each-other).

(The Arghya reception on Madhuparka)

When he has taken the (absolving) bath (and has become a "Snataka') he should address his teacher ; "Your honour should bring me the madhuparka" (i. e. the mixture of ghee, curds and honey). He or another person, competent to replace the teacher should bring to him, who is seated with his face turned toward the east, the madhuparka: the bed of grass (to sit down upon), the water for washing the feet, the arghya water, and the water for sipping, each separately. He seats himself on the bed of grass. He washes his feet with the water destined for this use with the formula : "In me may fortune rest" : when it is a sudra who washes his feet, the left foot should be washed first ; then the right foot with the formula : "'In me may rest the padya viraj." With the verse beginning; "In me may lustre" he should accept the arghliya water; the water offered him for sipping he should sip. Underneath the wooden vessel (in which the madhuparka is now to be given), a bushel of grass is held ; the two bushels of grass (viz. this one and the other one, mentioned in the following sentence) are (beforehand) tied together at their toppacts; one bushel of grass lies above the vessel ; between these two bushels curds and honey are put together in the vessel. If he adds curds, the madhuparka is a dadhimantra, if water : a udamantra, if milk : a payasya. This madhuparka he should accept with the formula : "On the impulse of god Savin; (I accept thee with the arms of the Asvins with the hands of Pusan)". Having put it down on the ground and having mixed the contents with his thumb and ring-finger, he should thrice eat of it with the formula : "For the sake of glory, of fortune, of food, of holy lustre (I take) thee to me."

The rest of it he should give to a brahmin, having seized the vessel at the left side", or to a non-brahmin, but then after first having sprinkled it with water, or he may bury (the remains) in a hole. Any other person then holding a knife in his hand, speaks, looking at the cow, (which now is brought near); "The cow, the cow, the cow!" To this (cow) he addresses the formula : "The cow will become a milch-cow (and the verse): "The mother of the Rudras, the daughter of the Vasus, the sister of the Adityas, the navel of immortality—to the people who understand me I will say : do not kill the guiltless cow, which is Aditi.—Let it drink water, let it eat grass." Immediately after this verse he should say : "Om ! Let it

loose", but if it is to be killed ; "Slaughter it."

Now there are six persons, to whom the arghya reception is due: an officiating priest at a Vedic sacrifice, a teacher, a Snataka, a King who has received the royal consecration, a dear friend, and a learned brahmin. For these he should kill the guest cow. He should sprinkle her with water with the formula : "For the guest (I sprinkle thee)."

The wedding

Having taken the (absolving) bath he (should return home and) attend upon his parents, being subject to thein. With their permission he should take for his wife a girl, who has reached the age of puberty, who is his equal in birth, who should belong to a different gotra (from her husband's), who should not be related to his mother in the seventh degree, who should be younger than himself who is older.

The messenger (who is to ask the girl in his name) he dismisses with the verse : "May he free from thorns, and straight, the paths by which our friends go a wooing for us; may Aryaman, may Bhaga lead us all, may our domestic state be well regulated, ye gods !"

On the fire, when it is being brought near on the occasion of the taking of the hand i. e. at the wedding proper, he speaks the verse; "May Agni come hither the first of the deities; may he release the offspring of this (woman) from the fetter of death. My this king Varuna grant, that this woman shall not weep over distress (falling to her lot) through her sons." To the fire, when it bus been kindled, he addresses, standing before it and looking at it, the verse : "May Agni garhapatya protect this woman, may he lead her unspring to long life. With fertile womb may she be the mother of living children; may she experience delight in her sons."

Before the fire a brahmin, restraining his speech, should stand lurned to the west, holding a vessel tilled with water ; to the south of the fire the mother (of the bride) should stand holding in a winnowing basket roasted grain mixed with sami leaves, in the absence of the mother any female person who can replace her (i. e. the mother's sister or the mother's mother). To the west of the fire he should put down a mat of eraka reed, or a bundle of grass, or something else of that kind, after having rolled it up, so that, when (at the moment the bridegroom and the bride are going to take their seat upon it) it is pushed forward, it reaches up to the western part of the grass strewn (around the fire).

Now he gives her the two garments after having sprinkled them and having spoken over them the verse : "The goddesses, who spun, who wove, who spread out and who drew put the end on both sides, may these goddesses clothe thee with long life. Put this grament on, living long."

Then he should address her : "Strike on this eraka mat with your right foot (so that the mat lies as indicated above). (The bride does so) with the formula : "May the path leading to the husband be successful for me." If she should not mutter, he (the groom) himself should mutter, changing it; "for tier." (instead of "for me"). On the southern (i. e. right)

part of the mat he causes the bride to sit down, the bridegroom himself takes place on the northern (left) part. They should touch one another (putting, for a moment, their hand on each other's shoulder). He himself (sitting on the mat) should offer the following burnt oblations speaking loudly, whilst the bride takes hold of him. Having sacrificed with "the great words" (i. e. bhuh, svaha! bhuvah, svaha! svah, svaha ; bhur bhuvah svah, svaha !) he sacrifices seven offerings, pouring the residue of the ghee after the oblation with the first verse on the head of the bride : "Thou who liest down athwart, thinking : "it is I who keep all things asunder", thee with a stream of ghee we propitiate completely. To samradha, Svaha!' (1). May no lament arise at night in thy house, may the weeping (females) take their abode apart from thee, mayest thou not beat thy breast with loose hair, mayest thou,'with thy husband living, shine in thy husband's world, beholding thy offspring, willi well-willing mind. Svaha ! (2). May Anumati approve today our sacrifice among the gods, and may Agni the oblation-carrier bring this about ; may he prosper. Svaha ! (3). May heaven protect thy back, Vayu thy thighs, and the two Asvins thy breast, may Savitr protect thy suckling sons. Until the garment is put on (thy sons) may Brhaspati guard (them) and the All-gods afterwards. Svaha ! (4). Taking childlessness, death of sons, evil, and distress (from thee) as a wreath from the head, I fasten it to thy foes as a fetter. Svaha! (5). Whichever evil was in all thy limbs, that I have removed by the offerings made with a ladle full of ghee. Svaha !(6) (and the last or seventh) with the verse beginning : "O Prajapati.

Now he seizes with his right hand her right hand-her open hand with the fingers extended, if lie wishes male, her fingers (only), if he wishes female children, her hand together with the thumb, if he wishes both—with the verses : "I seize thy hand that we may be blessed with good-fortunes, that with me as a husband thou mavest live to old age. Bhaga, Aryaman, Savitr, Purandhi, the gods, have given thee to me that we may rule our house.—Soma gave her to the Gandharva; the Gandharva gave her to Agni ; Agni gave welfare and riches and this one to me.—Soma acquired thee first as his wife, after him the Gandharva acquired thee. Thy third husband is Agni, the fourth am I, (thy) human (husband)."

Then he should make her step upon a stone after the manner described in the chapter on initiation (1. 8), changing the masculine gender into the feminine.

Whilst being regarded by the bride on the north eastern part of the fire he murmurs the verses : "Be not of evil eye, not bringing death to me, thy husband ; bring luck to the cattle, be kindly disposed and full of lustre. Give birth to living children, love the gods, be friendly. Bring luck to our two-and four-footed ones.—May Prajapati generate progeny for us, may Aryaman unite us to reach old age, enter, not ill-omened, the world of thy husband. Bring luck to our two-and four-footed ones.—Lead, O Pusan, to us, the highly blessed one, into whom men pour their sperm, her, who may willingly part her thighs, into whom we willingly may introduce the member.— Yonder am I, this one art thou; the Saman am I, the Rc art thou; the mind am I, the word art thou, the Heaven I am the Earth art thou. Come, et us join together, let us unite our sperm to generate a male child. Be devoted to me, occupy one couch with me, thou So-and-so." Here should instead of "So-

and-so" put in her name.

Thereupon the pair should walk around the fire whilst the bridegroom mutters the formula : "Thou art food, strength by name is thy mother; come thou to with progeny, with wealth."

After the circumambulation her brother or another person who is a friend of hers should pour with his joined hands out of the winnowing basket into her joined hands roasted grain sprinkled with ghee, "picking out" again and again (i. e. not all the grain at once, but at several times) Having "spread under" and poured over (the roasted grain) some ghee, the other one (i. e. the bride) should sacrifice it in the fire with the three verses ; "This young girl going from her parents to the world of her husband, has sacrificed away her diksa." Svaha.—This woman, strewing grains into the fire, prays : "May my husband live long, may my relations be prosperous." Svaha.— To the god Aryaman the girl has sacrificed, to Agni; may he, the god Aryaman, loosen her from here, not from thence.' Svaha! After each oblation he mutters, four times (i. e. after each of these three, and after the fourth one, mentioned beneath) the verse ; "May we find our way with thee through all hostile powers, as through stream— of water." Without mantra the person who holds the roasted grain (the mother etc. cp.I. 20) should pour out as a fourth oblation (the rest of the grain in the winnowing basket) for (the obtaining of) a (special) wish (i. e. in order that the bride may see fulfilled any wish, on which she has to fix her thought). The right neb of the winnowing basket they call "the wish."

On the north-eastern part of the fire he causes her to step forward seven steps, each with one of the following formulae; "One for sap ; may Visnu go after thee.—Two for juice; may Visnu go after thee.—Three for prosperity ; may Visnu go after thee.—Four for comfort ; may Visnu go after thee.—Five for progeny; may Visnu go after thee.—Six for the seasons; may Visnu go after thee.—Bé a friend of seven steps."

At the seventh (step), having caused her to stand directed to the east, they should sprinkle her out of the vessel filled with water with the three verses, beginning : "Ye waters are beneficent."

The lookers-on he addresses with the verse : "This woman wears auspicious ornaments. Come up to her and behold her. Having brought luck to lier, go away back to your houses."

Then he should make her look on the pole-star, the star arundhati (i. e. alkor of ursa major), and the seven seers (ursa major), when she declares ; "Let me see (them)." To the pole-star she addresses looking at it, the formula; "Thou art the pole-star (dhruva, firm), may I become firm (i. e. fixed) in the house of my husband So-and-so", uttering the name of her husband (instead of "So-and-so"), and at the end of the formula her own name in the nominative case. On arundhati she looks with the formula: "Arundhati, may I be held fast by my husband So-and-so," uttering the name of her husband and at the end of the formula her own name.

When she departs (to the house of her husband), he speaks over her the verse ; "May Pusan lead thee thence, grasping thy hand ; may the Asvins carry thee forth in a chariot ; go to the house, that thou mayest be a housewife; having control thou shalt speak unto the council."

When she has reached her own house, (some women) of good disposition, that possess beautiful progeny and have reached old age together (with their respective husbands), make her descend with the verse ; May here succeed for thee by progeny what is dear (to you). Watch thou over this house for housewife-ship ; unite yourself with this one, your husband ; then, being not deficient, thou shall sptak to the council.

Thereupon he makes her sit down on a bull's hide with the hairy side turned upwards, with the verse : "Here may cows sit down, here horses, here men. Mere may also Pusan with a thousand sacrificial gifts sit down." Having placed a boy in her lap he should throw sweetmeats' or fruits (in its hands). Having removed the boy he should, whilst the wife holds on to him from behind, sacrifice with the following eight formulae, each concluded with the word Svaha! : "Here is steadiness. Here is independant steadiness. Here is delight. Here take delight. In me the steadiness. In me the independant steadiness. In me the joy. In me rejoice."

During a period of three days and nights they should abstain from saline or pungent food and from sexual intercourse, sleeping on the ground and lying together without approaching one another. After the lapse of the three days they should cohabit. In the night (following on the three-day period, (begins) the ritual work of the married pair.

He should sacrifice the expiatory oblations with the formulae : "Expiating Agni! Thou art the expiation of the gods. I, a brahmin, entreat thee, desirous of protection. The substance, which dwells in her that brings death to progeny, remove from her. Svaha.— Expiatory Vayu ! Thou art the expiation of the gods. I, a brahmin, entreat thee, desirous of protection. The substance, which dwells in her that brings death to cattle, remove from her. Svaha—Expiatory Surya ! Thou art the expiation of the gods. I, a brahmin, entreat thee, desirous of protection. The substance, which dwells in her that brings death to the husband, remove from her. Svaha.—Expiatory Candra ! Thou art the expiation, of the gods. I, a brahmin, entreat thee, desirous of protection. The substance, which dwells in her that brings destruction to the house, remove from her. Svaha.—Expiatory Agni, Vayu, Surya, Candra, you are the expiation of the gods. I, a brahmin, entreat you, desirous of protection. The substance, which dwells in her that brings destruction to fame, remove ye from her. Svaha."

Having sacrificed from a sthalipaka to Agni and Prajapati and having poured together into a wooden vessel the remnants of each oblation, he should address her with the words : "'Anoint thy vital canals." First (she anoints) the navel, then the organs of sense which are above (viz. eyes, nose, ears, mouth), then those beneath (the navel).

After the three days have passed, the cohabitation takes place, after the husband has muttered the three following verses: "May Visnu make the womb ready ; may Tvastr frame the shape (of the child), may Prajapati pour forth the sperm, may Dhatr give thee concep-

tion.—Give conception, Sinivali, give conception, Sarasvati ; may the two Asvins, the gods wreathed with lotus, give conception to thee.—The embryo, which the Asvins with golden firedrill produce : that embryo I put into thee, for giving birth in the tenth month."

The cohabitation takes place in this manner after each menstrual period.

After the burnt oblations he should give a cow to his teacher, in default of the teacher he should give a cow to (some) brahmins.

The regular evening-and morning-sacrifices

At the evening-and morning sacrifice he offers first an oblation of ghee to Agni, a second to Prajapati; thus also in the morning, but then instead of Agni : to Surya.

The Vaisvadeva

Of his evening-and morning-food he puts aside two great portions destined for the bali-offerings, and sacrifices into the fire from the foremost portion: "To Agni. Svaha! To Soma. Svaha ! To Dhanvantari. Svaha! To Heaven and Earth. Svaha ! To the All-gods. Svaha! To all the Deities. Svaha ! To Prajapati. Svaha !" The last one only mentally (i. e. he thinks only : "To Prajapati. Svaha").

Then to the north of the fire he offers (on the ground) a bali-sacrifice with the verse : "The gladdening, trembling, increase-bringing ones, that follow on the track of the wind : to these I, desirous of food, offer a bali-sacrifice. May much nutritive food fall to my share." In the same way it (someone) hungers.

On the place where he collects his revenues (his rice, barley, etc.) lie offers a bali-sacrifice with the formula : "To Death's abode." Of the rest bali-offerings are made sunwise, with the formula : "To the house-deities I offer a bali; may they accept this from me, may they protect me, may they guard me, may they preserve me. To these obeisance, to these Svaha," first near the water-jar, then in the middle of the house, in the north-eastern part, near the bed, on the threshold, near the enclosure, and near the place where the Brahman has his seat. The remains he should pour out for Dhanvantari.

At all the house-rites a benediction must be said (by one or more brahmins who must then be entertained with food). This (benediction) is called the great means of appeasement (i. e. of averting evil).

The sacrifice of the first fruits

When he is about to undertake the sacrifice of the first fruits, he should first perform a sacrifice with the old fruits to Agni, Dhanvantari, Prajapati and Indra, they offer three oblations of the first fruits, in autumn of rice, in spring of barley, in the rainy season of millet. On these occasions a mess of the corns boiled whole, is offered successively to Indra and Agni, to the All gods, to Heaven and Earth. Or one mess only is offered. The "spreading-under" and the sprinkling of ghee have been dealt with (and should take place here). Twice he cuts of a fragment from the sacrificial substance, then he should partake of

it after having muttered the verse ; "From the good ye have led us to the better, ye gods ! Through thee, the nourishment, may we obtain thee. Thus enter into us, O Potion, being refreshment, for the good of our children and ourselves pleasant." Of the barley he should partake with the verse:"This barley, mixed with honey, they have ploughed through Sarasvati under Manu. Indra was lord of the plough, the hundredfold wise one ; ploughers were the Maruts, the exuberant givers." Of the millet he should partake with the verse; "May Agni partake first, for he knows how the sacrificial substance is ; may he, the friend of all human tribes, make the herbs blessed for us."

The sraddha

When thy are going to perform a sraddha, they should bathe, put on clean garments, strew the house with sesamum, and prepare the food, sprinkling it with "substances fit for oblation"; during all the acts they should use the left hand, wear the sacred thread (or the upper garment) on the right shoulder and beneath the left arm-pit. All that he gives, he should give after sprinkling it with 'substances fit for oblation.' The expression : "substances fit for oblation" means : sesamum.

Having brought tooth-sticks, water and unguents proper for bathing, water for washing the feet, which has been drawn first of all, he causes to sit down (some, at least three) brahmins, spotless in three respects (i. e. knowledge, birth and behaviour) with the verse: "May my Fathers come to their share, called by the Viraj from the oceanic water. Live ye upon this undiminished (share), delight ye at free will in that which is given by me." Then he should give to the brahmins darbha grass cut off near the root, having made (from this grass) layers wound from right to left, with the formula : "Here, Father, So-and-so is a seat for thee and for those who come here with thee ; for these also is the seat." In the same way for his grandfather and great grandfather. Then he should give them water mixed with sesamum (pouring it out) through a strainer, perfumes and flowers.

Having cut off a portion of the food and having sprinkled it with ghee, he takes the grass for strewing around the fire etc., asks the brahmins permission to sacrifice into the fire, carries it forward in south-eastern direction and strews the grass shaking it around the fire three times from left to right, wearing his sacred thread (or his upper-garment) on his right shoulder and beneath his left arm-pit. He should sprinkle water around the fire three times from left to right and three times from right to left. The fuel and the enclosing pegs are of udumbara-wood, as also the ladle. Having made and consecrated by mantras the two purifyers, and having "purified" with them the food, he throws the purifyers into the fire and sacrifices by means of the ladle (from the food): "To Agni, who carries the oblation to the Manes. Svadha! Obeisance! Svaha ! —To soma, who is accompanied by the Fathers. Svadha ! Obeisance ! S-vaha." Then having shifted his sacred thread (or his upper-garment) to the left shoulder, and having touched water, he throws the ladle into the fire with the formula : "To Yama, who is accompanied by the Angiras. Svaha !" Having performed the namaskara according to the deities, he should sprinkle (again) water around the fire in the same way as before.

Then he puts a big portion of food with condiments in (different) vessels and pours milk or ghee upon it with the verse : "In the raw ones (i. e. the cows) the boiled nectar has entered , delight ye at free will in that which is given by me." The big portions he assigns with the verses: "This, ye Fathers, is your share, given in the vessels, the nectar, full of svadha. Live ye upon this undiminished (share), delight at free will in that which is given by me.— The immortal Word, the immortal Waters, the (immortal) Food : this is the three-fold, one-law-ed immortality of the Word.' Delight ye at free will in these three given by me; may here, ye gods, be weal for us.—This sacrifice to the fathers is the highest: what is given in the vessels, what is destined for the Fathers, O Agni. Word and Mind, ye Fathers, are your offering. Delight ye at free will in what has been given by the Asvins.—The Fathers here on the earth, those in the atmosphere, and those of the ocean, those that have reached the Word, that have become immortal, may these all delight in this sacrificial substance.—Here is strength (food) for you and here Svadha, eat ye and drink it, and may this (portion) not be diminished for you. Take with you the Svadha : the spring of nectar ; enjoy the Svadha, ye Fathers, that is here.—The strength (food) and the deity that is here, ye Fathers, upon that may we live a hundred years. Make ye my life full of light and devoid of old age." There upon he puts these (vessels with food) down near the brahmins and assigns them with his thumb, muttering : "To So-and-so. Svadha. To So-and-so. Svadha."

While thy eat he speaks over them the verse : What by me (is bestowed) against or with my will, on an imperfect brahmin or on a non-brahmin', what food drops into terrific Nirrti, by which our Fathers and the deities are gladdened-may Vayu purify all that ; by it, being purified, may the deities rejoice, in it may the Fathers rejoice."

Having chanted the Asvasaman, composed on the verse beginning: "The ocean roared,"and having asked if (their meal) is finished, he should, wearing his sacred thread (or his uppergarment) upon his left shoulder, make them rinse their mouths. Then he says: "May you be pleased", circumambulates them, turning his riglit side toward them, and while they depart, mutters over them the verse : "What a black bird and a beast of prey, what an unclean person, have eaten of the food prepared by me with mantras, may Savitr Vaisvanara purify that ; by it, being purified may the deities rejoice ; in it may the Fathers rejoice themselves."

Having begged for the rest (of the food, to do with it as he pleases) he should return (from the spot to where lie has accompanied the departing brahmins). He smears with bull's dung a quadrangular spot, directed toward the south-east, and in the middle of it by means of a piece of wood scratches a line witli the formula : "Driven away are the asuras, the raksasas, the pisacas, who dwell among the Fathers", and lays down to the south of this square a file-brand with the verse : "Whatsoever asuras roam about at will assuming various shapes, being large-bodied or small-bodied (?), may Agni expel them from this space." Having strewn darbha grass along the line, he makes him (i. e. his father) rinse his mouth by means of a vessel filled with water (from which he pours out some quantity): "Father So-and-so, rinse thy mouth, and may these that accompany thee here also rinse their mouths." In the same way for his grandfather and great-grandfather. On these

places (where he has poured out the water, for each of the three ancestors a little more to the south) he lays down little balls of boiled rice, addressing each of his ancestors by his name, with that part of the hand which is sacred to the Manes', with the formula : "This is for thee, Father So-and-so, and for those who accompany thee. Svadha. Obeisance." In the same way for his grandfather and great-grandfather. If he does not know their names, then with the formulae : "Father, this is for thee. Grandfather, this is for thee. Great-grandfather, this is for thee." If he does not know his kinsmen (nor their names), then with the formulae : "This is for the Fathers, who dwell on the earth. This is for the Grandfathers who dwell in the atmosphere. This is for the Great-grandfathers who dwell in the heaven." With the formula : "Here, ye Fathers, regale yourselves; like bulls come hither, each to your own share" he should turn round to the north and sit down, holding his breath as long as possible. Then he (turns back and) having muttered the formula ; "The Fathers Laye regaled themselves ; like bulls they are come hither, each to his own share", he makes them rinse their mouths in the same way as described above, be loosens the tuck of his garment, performs obeisance to each of the deities, and assigns garments to them : a knot of wool or a cloth consisting of the fringe of his garment, with the formulae : "Here 'is a garment for you, O Fathers; give ye a house to us, O Fathers ; give fruit to the womb, 0 Fathers ; a boy wreathed with lotus, that here may be a male child." He gives ointment and collyrium with the formula: "Anoint thee, So and-so !" and "Anoint thy eyes, So-and-so !" He should give perfumes and flowers. He then addresses them with the following six formulae of obeisance : "Obeisance to your sap, ye Fathers! Obeisance to your lustre, ye Fathers ! Obeisance to your life, ye Fathers ! Obeisance to your terror, ye Fathers ! Obeisance to vour strength, ye Fathers ! Obeisance to your wrath, ye Fathers ! and to your Svadha. Obeisance to you, ye Fathers !" With the verse : "Ye waters, who carry food, nectar, ghee, milk, kilala and parisrut, are Svadha ; satiate my Fathers" he pours out water, and speaks over it the verse : "May it not diminish for me; may great liberality fall to my share; may the Brahmins delight in the food I offer repeatedly. May what I give (to the Brahmins) become for me in the highest abode Nectar-water of a thousand streams.—May Gods and Fathers subsist here upon this liberality of mine. Live ye upon this undiminished (share), delight at free will in that which is given by me." He then circumambulates, turning toward it his right side, (the spot where the ancestors have been regaled) with the verse : "They who are common and benevolent, the living amongst the living, mine : may their prosperity fall to my lot in this world through a hundred years."

The rice balls may be eaten by a sick person, by one who is desirous of food, or they may be thrown into the fire or the water, or given to a goat, a cow, or a brahmin. Of the rest (i. e. either the rice from which the rice balls have been taken, or the rest of the food eaten by the brahmins) he may eat, but he should not eat his fill.

The Astakas

On each of the three dark halves of the months following on the Agrahayani-fullmoonday fall the Astakas: the Astaka of vegetables, the Astaka of meat, and the Astaka of flour-cakes. The sacrificial substance is vegetables, flesh, flour-cakes, and (for all) a mess

of boiled rice. Of these substances he should sacrifice into the fire in the manner prescribed for a sthalipaka, with the formulae : "To the Astaka Svaha ! To the Astaka par excellence. Svaha! To the favourable Astaka. Svaha ! To the Samvatsara, to the Parivatsara, to the Idavatsara, to the Idvatsara, to the Avatsara make ye (the offering) with obeisance. Through thee may we, undecayed, unbeaten, long enjoy the favour of these (years), which are worthy of sacrifice. Svaha!". Having poured out the burnt-oblations, he should respectfully address (the fire ?) with the formula: "Come, thou good Fortune (or : "O Bhaga); come, thou good Fortune ; come, thou good Fortune."

At the middle Astaka, he should have a cow slaughtered. He should sprinkle her with the formula : "To the Astaka agreeable I sprinkle thee." Of this (cow) he should take out the left flank, the left apaghani and the left buttock.

On the next day he performs the anvastakya-sraddha (i. e. the sraddha on the day after the astaka), or it may take place on the same day. Having made sit down (some) Brahmins (at least three), who are worthy to partake of the sacrificial substances, he should satiate them, carry forward to the south (out of this fire) six fires, and dig near each of these fires one trench, a span long, three fingers broad, one finger deep. In these trenches he deposits the balls of boiled rice, addressing his ancestors each with his name, with that part of the hand which is sacred to the Manes. The marrow he lays down for the male ascendants, the ribs (etc.) for the female ones.

Some adhvaryus teach about this subject, that the middle rice ball (offered at the anvastakya-sraddha) should be eaten by the wife of one who is desirous of offspring ; thus also (the middle rice ball) of an (ordinary) sraddha, or the sthalipaka.'

The funeral ceremonies

When the corpse of one who had consecrated and during his lifetime maintained the three sacred fires has gone lost, he (viz. the son) should fetch 360 palasa-stems and shape these on the skin of a black antelope into a human frame : for the head he lays down 40, for the neck 10, for the two arms 100, for the fingers again 10, for the breast 30, for the belly 20, for the thighs 100, for the organ of generation 10, for the knees and the legs 30, for the toes 10. "So many are the bones of a man", says the sacred tradition.

If the corpse has not gone lost, they should shave the hair, pare the nails, wash it and raise it on a pyre ; here they pile also his sacrificial utensils in the way described in the chapter of the brhmana which begins : "on it they place him ; on his nostrils he should put down the two sruua-ladles". Having previously taken four ladle-fuls of ghee, according to the prescripts of the chapter in the brahmana beginning : "He who knows thus, if he should fall ill", (and then having made an oblation with this ghee in the fire) he puts, if possible, a piece of gold on the mouth of the corpse, propels the fires to the pyre and addresses it respectfully with the chaunts: with the one composed on the verse beginning ; "The eagle flying in the vault", according to the gramageya ; when the smoke has risen upwards, with the one composed on the verse beginning: "Thy sparkling smoke arises" and when

the fire has risen, with one of the two composed on the verse beginning : "Agni, he gracious ; thou art great". The Samans should be chanted right off ("without returning" i. e. without repetition): "without returning in yonder World" so says a brahmana.

If the wife of one who has consecrated his three sacred fires, comes to die before him, he should cremate her with a fire produced from the fire-drill or with a santapana-fire.

Having selected as burial ground a spot, which by its nature is not saline, and whence the water flows down from right to left tortuously, or a spot, where herbs grow, and here having cremated the corpse, they go away without looking back in order to bring the libation of water to the deceased ; this they do not perform in streaming water. The libation should be poured out so that always the youngest among them pours it out before the elder one ; at the brink of the water ; and if there is no brink, after having dug a well. With the nameless finger (i. e. the ringfinger) of the left hand he throws once some water forward, uttering the name of the deceased. If (the libation is made) in streaming water, they should first loosen the hair on the head, they plunge into the water and having poured out the water-libation out of the hollow of the two open hands held together, they should tie up the hair and each of them should touch the fire of a firebrand with the formula : "O Agni sukahi *(?)*, drive ye away my evil." He should touch a sami-branch with the formula : "Thou art a sami, remove (samaya) my evil", a stone, with the formula : "A stone art thou; hard (steady) ; art thou ; may I be steady"; then without any formula, a piece of bull's dung.

When he has poured out the libation of water he should sit down with his face directed toward the south, and those who have accompanied him should sit down near him. Another one addresses to them edifying words. At sunset they enter the village.

During this (day and the following) night they subsist on one single bean, or in complete indifference to all worldly enjoyments (i. e. eating nothing at all).

On the next day he mixes milk and water (goes to the spot of cremation) and besprinkles the bones (with this mixture) by means of a goatshorn, a cow-horn or an earthen pail.

On the third day he should mix perfumes with herbs in water sprinkle the bones by means of a sami or palasa-branch and put them into an urn without making a noise (i. e. so that no grating sound is made by the bones touching one another). If the deceased was a woman, then in an earthen water-jar. Passing a crossway, a great arbour or a stream, he should bury (the urn) in the stair of a landing place of a stream.

On the third day after the decease they make them (i. e. the participants) bathe with apamarga-plants, clay and cowding.

Having washed their clothes they remain idle during a period often days. From the fourth day on they should snbsist on food begged (from the neighbours). From this (begged food) the offering into the fire has been demonstrated (and should in the well-known way take plare during these ten days), and with this begged food they should pass along together the time they expect.

After the lapse of the period of the ten days they should perform a sraddha. Until they

perform this sraddha they should not give (alms). The restrictions for the naksatras are : (this sraddha should take place) under (i. e. when the moon stands in conjunction with) the maghas, under naksatras consisting of one single star, under bharani, and of the double naksatras under the former ; not under the fixed ones, viz. rohini and under the later star of a double naksatra. Having made (some) brahmins sit down who are worthy to partake of sacrificial substances, and having satiated these, he should give one single ball of boiled rice, (changing the plural of all the mantras with which it is offered) into the singular, and leaving out the addition; "and to those who accompany thee" (II. 2). He should satisfy all their (i. e. the brahmins) desires. Having accompanied them and having begged for the rest of the food, to do with it as he pleases (cp. 11.2, beg.), he should return. The rest he should not partake of; only after having made the brahmins pronounce their blessing he may partake of it.

The rite of the house

Now follows (the description) of the rite of the house. If he wishes that his house may nourish he should every month, every season or every year in the first half of the month under an auspicious naksatra undertake the rite for averting evil from his house. Having by means of indra valli-creepers tied together apamarga, palasa, sirisa, arka udumbara, sadabhadra and amrtatrm, and (with this kind of broom) having cleansed and swept his house, having be sprinkled it with water, having sprinkled it all over by means of a handful of darbha-grass with the five products of the cow, having strewn about white mustard seed, he should in the middle of the house perform the bali-offerings to the house and sacrifice oblations of ghee to Vastospati and then a thousand times sacrifice ghee with the verse addressed to Savitr. This same sacrifice then takes place in the south-eastern, then in the south-western, then in the north-eastern and then in the north-western part of the house ; or in the middle (only). The sacrificial fee consists of a cow, a garment or a piece of gold. Then he should regale (some) brahmins with food and make them pronounce their benedictions.

Thus performing he enjoys endless and great prosperity, he gets many sons, who do not die young, the fire burns not his house, no biting animals will devour him, no thieves, rivals, demons or devils annoy him.

If his cows grow sick he should in the midst of his cows sacrifice a thousand ghee-offerings in the same way (viz. with the verse addressed to Savitr). The same holds good of the sickness of horses, camels, asses, goats and sheep, buffaloes, elephants and any of his bipeds or quadrupeds.

The allaying of prodigies.

Now we shall explain the allaying of prodigies. Now, when in his house the central pillar buds forth, when a dove enters into it, when a cow sucks another cow, when a draught-ox scrapes the sky (with his horns), when smoke or names are seen while there is

no fire, when honey is produced, when an ant-hill arises, when a frog croaks in the water-reservoir, when dogs roam about in the house—in case of these and other (prodigies and bad omens), he sacrifices! ghee with the verses beginning : "What, O Indra, we fear", "the prodigious master of the seat", "adhyayamutesumudasy", "always, O Agni", "when the lord of the house is whetted", "from all sides, O Agni","whom guard' and with the verse addressed to Prajapati; at the beginning and end with "the great words'". Then she should chant the samans composed on these same verses.

The recitation of the Veda during a fast

Now we shall explain the rite of the recitation of the Veda during a fast. He should wear a clean garment or a dress made of bark ; he should desire (i. e. partake of) food fit for sacrifice, water or fruit. But only a brahmin should bring it to him'.

Having gone forth from the village in an eastern or northern direction ; having smeared with cowdung, a sthandila-a bull's hide in size ; on a clean spot or in the neighbourhood of water, having sprinkled it; having drawn the lines on it; having besprinkled it with water; having heaped fuel on the fire (which he has carried to this spot); having sacrificed the two agharas and the two ghee-portions, he offers burnt-oblations to Agni, to Soma, to Rudra, to Indra, to Brahman, to Prajapati, to Brhaspati, to the All-gods, to the Seers, to the Rk-verses, to the Yajus-formulae, to the Saman-chaunts, to Faith, to Knowledge, to Wisdom, to Savitri, to the Lord of the seat, and to Anumati.

Having sacrificed he should, sitting on darbha-grass, the tufts of which are directed toward the east or the north, hold darbha-grass in his right hand. So sitting he should recite mentally four time's "the great words" preceded by the syllable om, the verse addressed to Savitr and the chaunt composed on this verse, the chaunts composed on the verse beginning : "The king Soma" and the two chaunts composed on the verse ; "The Brahman born". Then he should begin with the beginning of the Veda and without interruption recite it silently, and he should not interrupt the recitation by stopping. Now were he to converse in between, or to stop, he should thrice hold his breath as long as he is able to, sip water, and begin just where he left off. If a passage does not occur to him, he should during the time the forgotten passage would have taken him, recite another passage either from the Rigveda, the Yajurveda or the Samaveda [thereby he reaches that forgotten part], or a Saman that has the same brahmana, the same metre, and the same deity ; or he may repeat (during the time which the forgotten passage would require) the Saman belonging to the verse beginning ; "The sea has roared"— Standing, sitting, lying down or walking he should recite the Samhita: thriving falls to his share. Or, according to Jaimini, he may recite the first triple section a thousand times, or ending with the syllabe varyam, or as much as he likes.

By reciting twelve times the Samhita he removes from himself the faults committed by studying on forbidden days, by angering his teacher, and through improper acts. The Veda is by him sanctified and purified. If he recites the samhita another twelve times, he gains thereby the world of Prajapati. If he recites it another twelve times, he gains thereby the

world of Usanas. If, fasting, he recites the samhita one thousand times, he becomes one with Brahman and resplendent moving : unrestrained he gains the fulfilment of all his wishes. If he recites it during a year subsisting on begged food, he gains the (power of supernatural) vision ; if during six months subsisting on barley-gruel, if during four months subsisting on water and barley-flour, if during two months subsisting on fruits, if during one month subsisting on water, or during twelve days eating nothing at all (he recites the samhita), he obtains the power of suddenly disappearing, and sanctities his kinsmen : seven kinsmen in the ascending, seven in the descending line and himself as fifteenth he rescues (from rebirth).

They call that the ladder of the gods. By means of that the gods reached their divine station and the seers the position of seers.

The beginning of this "session of Brahman" is threefold : at the morning pressing (of the Soma-sacrifice), at the midday pressing, or in the last part of the night : (the muhurta) sacred to Brahman. Of this (session of Brahman) there are two intermissions of study (i. e. of reciting the Veda): if he himself is unclean, if the spot (where the recitation takes place) is unclean.

This rite was proclaimed by Prajapati to the seven seers, by the seven seers to Mahajahnu, and by Mahajahnu to the Brahmins.

The appeasing of the Planets

Now we shall explain the reception, the food-offering, and the victims for the grahas (i. e. the "Seizers", the Planets).

One who is devoid of faith, who is unclean, who does not mutter the sacred texts, who forsakes the auspicious ceremonies, that man the Seizers lead of a surety to the abode of Yama. I shall proclaim the hospitality to be offered to the Seizers of terrific action, who frequent the path of the stars. He should perform this (hospitality) for the sake of appeasing (them).

Red are the Sun and Mars, white are Venus and the Moon ; Mercury and Jupiter, these two are recorded to be yellow ; he should know Saturn as also Rahu and Ketu to be black. The wise men should for this occasion get ready flowers which have the colour of the Seizers.

Having smeared with cowdung a sthandila, a bull's hide in size, having sprinkled it, having drawn the lines on it, having besprinkled it with water, having heaped fuel on the fire, having sacrificed the two agharas and the two ghee-portions, he calls to their places the Seizers : the Sun, to the middle ; to the south of this place, Mars ; to the south-east, the Moon ; to the north-east, Mercury; to the north, Jupiter ; to the east, Venus ; to the west, Saturn ; to the south-west, Rahu and to the north-west, Ketu. The place for the Sun is circular, for Mars triangular, quadrangular for the Moon, arrowshaped for Mercury, a trapezium lor Jupiter, a pentagon for Venus, a segment for Saturn, a half-circle for Rahu, banner-shaped for Ketu.

He should know that the Sun represents the god Siva, the Moon : Uma (i. e. the consort of Siva), the planet Mars: the god of war Skanda; Mercury stands for Narayana (i. e. Visnu), Jupiter is Brahman itself and Venus is Indra. Saturn he should consider as Yama, Rahu is the messenger of the God of Death, and Ketu is (his secretary) Citragupta. These are the deities of the Seizers.

Fire, Water, Earth, Visnu, (Indra), Indrani, Prajapati, Sarpa (i.e. Sesa) and Brahman are in successive order their presiding deities.

The Sun was produced in Kalinga-land, the Moon in the country of the Yamuna, the place of Mars is the Vindhya, that of Mercury is the "Midland", that of Jupiter the country of the Sindhu, that of Venus the Ghats, Saturn belongs to Surastra, Rahu to the eastern region and Ketu to the Parvata-mountain (i. e. the Himalaya ?). These are the regions where the Seizers are produced.

A piece of arka-wood, smeared with ghee, of the size of a span, lie should put into the fire for the Sun, of khadira-wood for Mars, of palasa-wood for the Moon, of the apamarga-plant for Mercury, of asvattha-wood for Jupiter, of udumbara-wood for Venus, of Sa mi wood for Saturn, of durva-grass for Rahu and a tuft of Kusa-grass for Ketu.

He sacrifices twenty-eight oblations of ghee. With these (i. e. the following verses ?) he sacrifices into his household-fire to the Sun a simple mess of rice, to Mars sacrificial food, to the Moon a mess of rice boiled with ghee, to Jupiter a rice mess boiled with water, to Venus a rice mess boiled with milk, to Mercury a mess boiled with sour coagulated milk, to Saturn a mess of beans with sesamum meal, to Rahu a miss of meat, to Ketu a mess of rice boiled with turmeric. With the verse beginning: "With true light" to the Sun ; with the verse : "Agni is the head" to Mars ; with the verse : "Swell up, let be gathered" to the Moon; with the verse: "The Brahman, born" to Mercury ; with the verse : "Brhaspati, what the enemies" to Jupiter ; with the verse : "After his ancient splendour" to Venus ; with the verse : "To weal for us the divine ones" to Saturn ; with the verse : "With what aid the wondrous" to Rahu, with the verse : "Making a banner for the bannerless" to Ketu.

As sacrificial fee he gives for (the offering to) the Sun a red milch cow, for (the offering to) Mars a red ox ; for the (offering to the) Moon a conch; for (the offering to) Mercury a piece of gold ; for (the offering to) Jupiter a garment ; for (the offering to) Venus a horse ; for (the offering to) Saturn a dark-blue cow ; for (the offering to) Rahu a piece of iron; for (the offering to) Ketu an elephant. Or for each a piece of gold or that by which his teacher is pleased.

As the arising of something terrible is warded off by a mystical diagram, so is this evil-averting-rite a protection for those that are touched by a "Seizer". For him who abstains from hurting living beings, for him who practises self-control, for him who has gained possession of dharma, and for him who constantly checks himself, the "Seizers" are at all times favourable. The "Seizers" are the cows, they are the princes, and especially they are the brahmins ; being revered, they revere, being disregarded, they torment.

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This Dictionary has been compiled by a leading Hindu spiritual teacher and eminent vedic scholar *Swami Parmeshwaranand* of Haridwar (U.P.). He has written several books on Hindu religion and translated many important religious scriptures into English. He has also conducted several seminars, and work shops where many reputed theologists from all over the world took participation.

ISBN 81-7625-365-0
2003, Size : Crown
Jacket Design by JMS Rawat

Sarup & Sons

PUBLISHERS

4740/23, ANSARI ROAD, DARYA GANJ, NEW DELHI-110002